

SIR JOHN SIMON

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John Simon.

SIR JOHN SIMON

BEING AN ACCOUNT OF
THE LIFE AND CAREER OF
JOHN ALLSEBROOK SIMON
G.C.S.I., K.C.V.O., K.C., M.P.

BY
BECHHOFFER ROBERTS
("EPHESIAN")



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To my Mother

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CHAPTER ONE

"MY father was Welsh, my mother English, my wife Irish, and I went to school in Scotland," Sir John Allsebrook Simon, the subject of this book, once said, and he added, reasonably, "Wherever I go, I generally find that some portion of that ancestry stands me in good stead." There is a persistent rumour, based on his uncommon surname, that he is a Jew: in August, 1934, as Foreign Secretary, he quashed it once and for all in this letter to Sir Archibald Hurd, the author of the official history of the Merchant Navy in the War:

I know there are a number of people who industriously spread the rumour that I am a Jew, and even that my Jewish associations have an influence on the foreign policy of the country.

In fact, I am just an ordinary Briton of Aryan stock, without any Jewish admixture whatever. My mother comes from an old English family, and my father was Welsh—you will find lots of Simons in Pembrokeshire—and nobody who knew my relations and forebears would imagine that they were Jewish. Biblical names like Matthew and John and Matthias are a commonplace in those parts.

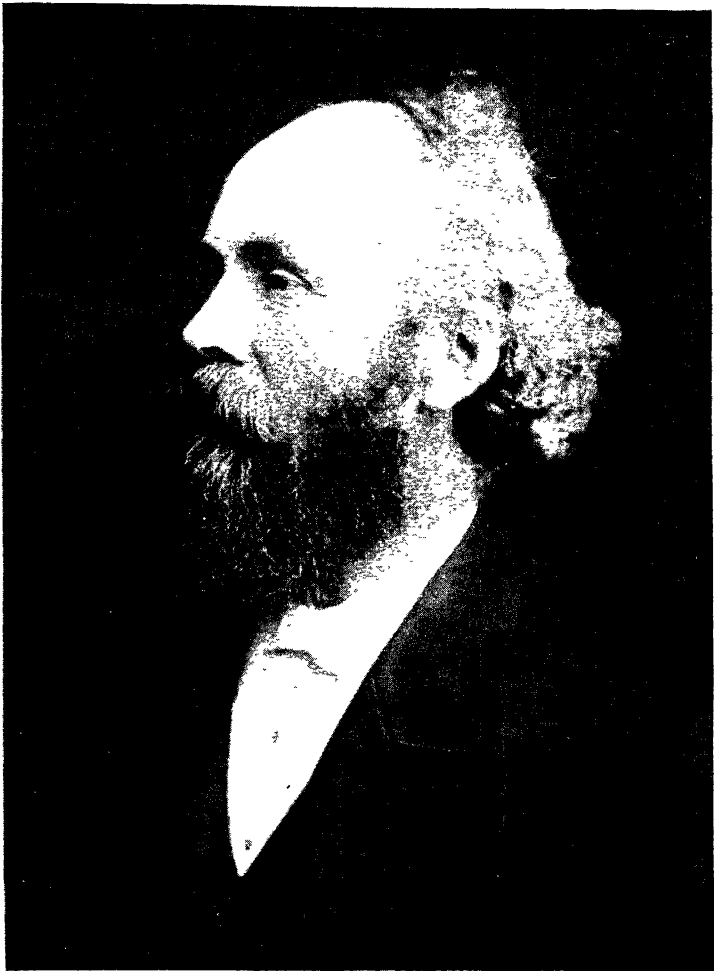
The only reason for which I have never hitherto attempted publicly to deny this rumour is that I think the same silliness or malice might attempt to distort the denial into some sympathy with anti-Semitism—an attitude which I regard as un-English and which I utterly condemn.

It is curious that a man usually precise in his words should employ so vague a term as "Aryan." As an ethnographical description, this seems to have been popularised by the Nazi Government of Germany to include any race (including the Japanese) with which they are anxious to be on good terms,

and to exclude any other whose weakness lays it open to oppression. Simon's meaning, however, is clear from the words which follow, and, so far as anti-Semitism is concerned, he has told the House of Commons (July 10, 1936) that "it makes my blood boil as an Englishman" to hear of a young Jewish couple being assaulted by Fascists in the East End of London.

Yet of the two other Sir John Simons known to fame, one was a Jew, a distinguished lawyer born in Trinidad of a family which had emigrated there from Spain to escape the Inquisition. Well known in the Courts as Serjeant Simon, he sat for twenty years in the House of Commons for the Yorkshire seat of Dewsbury; his efforts on behalf of his race brought him the nickname of "the Member for Jewry," though there were said to be very few Jews in his actual constituency, and he retained this proud title until his death in 1897. Our subject's other precursor, the Sir John Simon who lived from 1816 to 1904, was of French descent and pronounced his name with a stress on the second syllable; famous as a sanitary reformer as well as a surgeon, he was President of the Royal College of Surgeons in 1878.

The father of the present Sir John, the Rev. Edwin Simon, was born in 1843 in the remote Pembrokeshire village of Stackpole, the second of a number of brothers, three others of whom became, like himself, Nonconformist ministers in England. He was trained for the ministry at Spring Hill College, Birmingham, where one of his fellow students was a young man named Allsebrook. By him Edwin Simon was introduced to his sister, Fanny Allsebrook: they fell in love and, when he was appointed pastor of Zion Chapel in the Hulme district of Manchester, they were married on his thirtieth birthday in the Congregational Church at Rubery, near her home. (Over sixty years later Mrs. Simon formally opened a new Congregational church on the same site.) For thirteen years he laboured in Manchester; then, largely for reasons of health, he transferred to Bath, where he became President of the Somerset Congregational Union and was locally known as a keen fisherman, cricketer, golfer and cyclist. In 1902 he retired from active work and moved to Batch, near Mells, a few miles south of Bath, moving again in



THE REV. EDWIN SIMON
(Father of Sir John Simon.)

1912 to the neighbourhood of Broadway, in Worcestershire. He died there in May, 1920, after a year's illness, at the age of seventy-six.

Fanny Allsebrook was also a remarkable character, as every reader of her son's charming memoir, *Portrait of My Mother*, knows. She came of a long-lived family. Her grandfather, William Pole Allsebrook, was born in 1749 and lived to eighty-eight, dying in the year of Queen Victoria's accession. Her father, born in 1793, lived to be ninety-one. She herself was born on October 16, 1846, at Chadwick Manor, near Birmingham, where she first met the husband whom she survived by over sixteen years. As a widow, she went to Manorbier, in a house not far from Tenby Bay, and had reached the ripe old age of ninety when she died on October 31, 1936, and was buried beside her husband in the Somersetshire cemetery of Cheriton.

"Perhaps it is a mistake for a son, when burying his mother, to wear his heart upon his sleeve," Sir John Simon wrote in his obituary of her in *The Times* of November 2, 1936, which he afterwards reprinted in the book I have mentioned. "Certain it is that all who had the fortune to know her well felt that her friendship was a perpetual benison; and no description can convey to strangers the flawless impression of fulness of life and sweetness of spirit that she spread around her." I shall certainly not attempt any such description, though I have a vivid memory of meeting her, small, erect, vivacious, and with her sweet face set off by the Breton bonnet she always wore, the *coiffe de Rospenden* which she had herself selected during a holiday in Brittany as a suitable head-dress for her old age.

Sir John tells several stories about her. As a very small boy, he was walking hand in hand with her when they met some of his school friends; ashamed to be seen by them in such dependence, he withdrew his hand and only took hers again when they entered the gate of their garden. Then she said to him, "My little boy, never be ashamed to hold my hand. A son is never too old to hold his mother's hand." He comments, "It was so like her to have said nothing till my disloyalty sought to make amends." Again, in her

younger days she loved to grow flowers and was jealous of the space in their little Manchester garden which her husband, more practically, devoted to vegetables. On one occasion she rose early in the morning, planted some flower seeds in a corner on which both had designs, and nailed on a nearby tree the text, "Cursed be he who removeth his neighbour's landmark (Deut. xxvii. 17)." Her husband obeyed the Mosaic commandment.

"She was a Puritan of the old school," her son states, "and it was only in later years that she sometimes went to the theatre." He records, however, that she was seated with him in a stage box at a revival of *The Professor's Love Story* when the principal actor, the late H. B. Irving, sent him a note asking who the old lady was who was making the cast gaze at her and forget their lines: after the performance she was invited behind the scenes and entertained by the company. Two other stories admirably illustrate her character; both belong to the sad period of her last illness. She said to her son, "I always told your father that I must be buried with my wedding ring on my finger, as otherwise I might be tempted to flirt with the Archangel Gabriel." And again, thanking the nurse who tended her, she said "When I go to Heaven—and I hope I may—I shall run straight to the Throne of God and tell Him how good you have been to me and ask Him to reward you—openly!" The last word shows that a very practical spirit was part of her unswerving religion.

She had two children: John Allsebrook Simon, who was born on February 28, 1873, and a daughter who afterwards became a doctor's wife in her father's native Pembrokeshire. Mrs. Simon was responsible for the little boy's education until he was old enough to go to a kindergarten in Manchester; on their move to Bath, when he was ten, he attended the local Grammar School. His schooling might well have stopped there, for the slender financial resources of a Free Church minister's household did not often in those days permit prospects of a public school and a University. His father, however, had courage and imagination: he himself coached the boy for a scholarship examination at Fettes College, Edinburgh, and, when young Simon at the age of four-

teen went north to take the examination, he was given the kindly warning, "Remember, if you don't get it, you can't go." He got it; it was a £60 a year scholarship, which greatly diminished the strain on his father's purse during his school life. At that time Mrs. Simon hoped that he would grow up to be a doctor: his decision, taken at school, to be a lawyer disappointed her at first, but she soon became reconciled to his choice. She lived to see him become the most successful advocate of his generation and, in politics, alternately Solicitor-General, Attorney-General, Home Secretary—he had refused the Lord Chancellorship—Foreign Secretary, and Home Secretary again: had she lived only half a year longer, she would have seen him Chancellor of the Exchequer and next in succession to the Premiership of Great Britain.

To return to his childhood, he has told us in a speech which he made in Manchester on July 24, 1926, at a banquet in honour of an Australian cricket team, there was hardly any holiday afternoon in the early eighties when the Lancashire eleven was playing at the Old Trafford ground that his father did not take him to see the cricket:

Those were the days when the Lancashire eleven was the champion among English counties. . . . I could still, I think, pass a stiff examination in the Old Trafford records of 1881 and 1882. It used to be a boast of Macaulay (I mean the historian, not the Yorkshire professional) that if all the copies of Milton's *Paradise Lost* were destroyed, he would be able to reproduce the text from memory. If there is a fire in the Pavilion at Old Trafford—(and if there is not enough rain to put the fire out!)—I hope you will apply to me, in respect of those years, to reproduce "the numbers on the card and the order of going in."

It was, by the way, in this same speech that he consoled his audience for the fact that rain had stopped play in the Test Match that day after only ten balls had been bowled with the pleasant words, "I do not complain: my complaint is that these ten balls only gave us the opportunity of seeing the first pair of Australian batsmen. If only each ball had dismissed

one batsman, the day's play would have been long enough to show us the whole Australian side; and the vast Manchester crowd—and surely no crowd ever showed a better spirit in face of keen disappointment and wretched weather—would have gone home well content and remembered to the end of their lives the most satisfactory day's cricket they had ever seen.”

We know, too, that his interest in cricket in those childhood days did not stop short at watching it, for, half a century later, he took his wife to the house where he was born and was able to show her the marks of early cricket matches on the inside walls of his play-room.

His first political recollection dates also from these Manchester days. Much later, speaking in that city, he described “something that happened—I think it was in 1878—when I was a very small boy going to a dame's school in Moss Side. I remember going out of the gate of the little house where my father then lived, and as I went out, carrying my satchel, one of his friends came running down the street waving a newspaper and shouting something to my father. I think it was about one of the first speeches Mr. Gladstone made in the early days of his Midlothian campaign, and I heard my mother calling me back because I was wearing a blue tie.” Blue, it should be noted, was the Tory colour in Manchester.

Another early political memory is of flattening his school-boy nose against the window of a Bath bookseller to read a huge reproduction of the forged Parnell letter which had just appeared in *The Times*—and wondering what on earth the fuss was all about.

§

The first record of him at his Scottish public school was when he scored 0 not out in a house cricket match, a score which, though it might have been better, might equally have been worse. His proudest moment there as an athlete was scoring 27 not out in the big match of the year against the rival school, Loretto.* He was described in the Fettes maga-

* Such is my information. Simon insists that he scored 30 not out. I leave this problem for later historians.

zine at the end of this 1892 season as "a feeble bat at the beginning of the term, but improved towards the end on faster wickets. As a wicket-keeper an entire failure." Though he played sometimes in the first fifteen, he did not win his Rugger cap, but he was three years in the Fives ten and captained it in his last year. In the less important matter of work, he won a prize for French in his first term and soon distinguished himself in classics, becoming head of the school. Moreover, he won a prize when Calverley's examination paper on the *Pickwick Papers* was set for his form.

Among his contemporaries at Fettes were Hesketh Pritchard, afterwards famous as a cricketer and as the creator of that stirring character, Don Q; and Mr. Ian Hay Beith, who was his fag and is said to have been caned by him. Simon in 1930 met his own fag-master, who took the opportunity to pardon him for his juvenile inefficiency: Simon poured coals of fire on the other's head by saying that he had no recollection of being unfairly treated except on one occasion, which still rankled, when a study fire went out because the wood was damp. It may be added that at Fettes he formed the habit of writing to his mother at least three times a week, which he maintained to the end of her life.

He could not hope to go to Oxford unless he won sufficient scholarships to pay his expenses. In this he was successful: he was awarded a Fettes leaving scholarship of £100 a year for three years and, though he failed in the Balliol examination, he won an £80 scholarship at Wadham for the same period. Thanks to these, his University career cost his father nothing, nor did he ever afterwards have to draw on the family purse. Taking his seat on his first evening at the scholars' table in Wadham Hall, he found sitting immediately above him F. E. Smith, the brilliant young man from Merseyside, who was afterwards to become the first Lord Birkenhead, and C. B. Fry, the handsomest and most distinguished University athlete of that generation. Among the other youths at Wadham at this time were Theodore Cook (afterwards editor of the *Field*), F. W. Hirst, already a vigorous Liberal economist, and two young men preparing for a distinguished legal career, H. M. Givern and the future Lord Roche. Simon

quickly made his mark among them, not least as an athlete. He was a member of the famous Rugby fifteen, which under Smith's captaincy not only beat every other college at Oxford in 1894, but travelled also to Cambridge and defeated its best team, Caius, by one try to nothing. On the scholastic side, he achieved a first in Greats, won the Barstow law scholarship, and attracted the friendly attention of some of his seniors like Warren of Magdalen. He resolved to read for a fellowship and in November, 1897, the two newly elected Fellows of All Souls were Leo Amery (the future Minister) and Simon. The latter has always prided himself on his exceptional good fortune in remaining a Fellow of All Souls throughout his life, thus maintaining a contact with Oxford which has never been broken. In its first stage the fellowship, which carried no tutorial duties with it, provided him with £200 a year for seven years—which sum he used to lay the foundations of his career in the greater world of London.

There is a very stupid story, which both those mentioned in it always resented, that, after crossing swords once or twice with the dashing F. E. Smith in Wadham debates and in the Union, Simon tossed up with him to decide which party each should join, since there was obviously not room for both of them in one party. Besides its intrinsic silliness, this anecdote suffers from the fact that Smith had already made his mark as a Conservative before Simon reached Oxford, and that the latter was clearly designed from the moment of his birth to be "a little Liberal." Indeed, so successful were his first political speeches that even as an undergraduate he was marked out as a future light of that Party.

Apart from occasional "back bench" interjections, his first important speech in the Union was on November 2, 1893, when he was chosen to oppose a motion that "This House does not sympathise with the attitude of the miners in the coal strike." According to Mr. H. A. Morrah, the historian of the Oxford Union, "With an intensity of feeling, with a logic which could never be gainsaid, with a clarity of expression, and with abundant humour, Simon always advocated the theory and practice of Liberalism with a sincerity and an ingenuity worthy of Mr. Gladstone himself. . . . As an in-



PRESIDENT OF THE OXFORD UNION, 1896

dication of his attitude to matters outside the ordinary range of politics he came forward now in favour of granting degrees to women. In questions such as those involving privilege, Simon was always at his best. He had, of course, an hereditary bias in favour of setting religion free, whether in England or in Wales, but on the latter point he would declare with conspicuous moderation that hostility to the establishment was not hostility to the Church. On the eternal question of the House of Lords he once indulged in a grave review of the doings of that body, tracing its history for generations. Touching this same subject with humour, he showed how the House of Lords had been likened [by its supporters] to a brake, a safety valve, but, he pointed out, the brake only acted when the machine was going forward, never when it went backward or downhill. How was that? The safety-valve was prevented from working by Lord Salisbury [the Tory leader] sitting on it, a position neither dignified nor safe. On another occasion, when the subject before the House was educational, and Boyd-Carpenter of Balliol had pleaded for his children and for their religious education, Simon invited him to bring his children forward, a suggestion which of course produced a laugh.”*

After being Junior Treasurer of the Union for two terms—“Office-holding at the Union is a very useful experience,” he has since stated; “the Junior Treasurer has the management of a larger income than he is likely to acquire, at any rate for many years to come, and is responsible for a big staff of servants”—he was elected President in 1896. “In my day the Liberals were in a minority,” he admits, “though this did not prevent us from getting our full share of election to office.” And two years later his prominence in the Society led to his seconding F. E. Smith’s motion for the adjournment of the House on the news of Gladstone’s death.

A few less intellectual memories of him at this time have been preserved. Thus Mr. C. B. Fry recalls him as a “rosy-faced, curly-headed, blue-eyed” forward in the Wadham fifteen; and there was a story, in regard to the truth of which I express no opinion, about one of his adventures with “F.E.”

* *The Oxford Union*, 1823-1923 (Cassell, 1923).

The last-named having arranged to tutor a boy in the north during the vacation, celebrated the appointment by entertaining a party of friends and, finding after the bill was paid that he had insufficient money for his fare, removed some of Simon's possessions and pawned them. Simon, discovering this, visited the other's rooms and found there a parcel of shirts, just back from the laundry. He took these to the same pawnbroker and wrote to F.E., "I have recovered my football boots and fishing tackle, but your shirts are no longer at your lodgings. My advice to you is to make things right with your pawnbroker when you return."

We have his own authority for the fact that he always had a secret longing to be an actor, for he confessed this in 1935 at a memorial tribute to Sir Nigel Playfair, with whom also he had been at Oxford. He added, "I well remember that in my day and Nigel Playfair's the OUDS was also known as the 'Ordinary Undergraduate's Desecration of Shakespeare.'"

§

Perhaps the outstanding incident of his political activity at the University was his collaboration with five other young Liberals in 1897 in a volume entitled *Essays on Liberalism*.

Lord Rosebery's Ministry had resigned in 1895 and the Liberals had suffered a heavy defeat at the ensuing election. Moreover, no fewer than twenty-eight candidates of the Independent Labour Party had come forward, and, though none of them was successful, the new political threat to Liberalism was evident. The six Oxford men, therefore, set themselves a double task: to restore the waning forces of their Party in its traditional struggle and to offer a retort to the *Fabian Essays* of a few years before, which had inspired the Socialists. Besides Simon, the writers were Hilaire Belloc, F. W. Hirst, J. S. Phillimore (the finest natural scholar Simon ever knew, and afterwards Professor of Greek in Glasgow University), J. L. Hammond (who became editor of the *Speaker* and, with his wife, author of *The Village Labourer* and *The Town Labourer*), and P. J. Macdonell (afterwards Chief Justice of Ceylon). Phillimore and Hirst were the

nominal editors of the book, which had the distinction of being published by Messrs. Cassell in London, but Belloc was the prime inspiration, if only because he was the outstanding political theorist of his age in the University. His essay on the "Liberal Tradition" led the collection, followed by "Liberalism and Wealth" by Hirst, "Liberals and Labour" by Simon, "Liberalism in Outward Relations" by Phillimore, "A Liberal View of Education" by Hammond, and, lastly, "The Historic Basis of Liberalism" by Macdonell. It will be seen that the first three papers are likely to interest us most in these days, and that Simon, more perhaps by luck than by judgment, was entrusted with the handling of the most persistent problem of all.

"In these days, when books multiply and men decay," the preface begins modestly, "it becomes more than ever the duty of editors to provide some apology for the appearance of a new volume," but, without any apology in the popular sense of the word, it goes on to say that the six writers had been "drawn together in the political debates and the contested elections of the Oxford Union Society.* To that Society, and to the stimulating discussions of the Palmerston and Russell Clubs, we owe a common debt of gratitude. . . . Six years ago undergraduate officers tended to be Tory or Socialist; since that time we have seen an extraordinarily strong Liberal movement absorb, with one or two remarkable exceptions, most of those who care for political discussions or debates." Mr. Belloc, it continues, had been the leading spirit of this Liberal revival, and the editors express grateful admiration "for his kindling eloquence, his liberal enthusiasm, and his practical idealism"; he was responsible, they say, not only for his own contribution to these "youthful essays," but indirectly also for much of the others. "The special aim of this book was the statement of a few definite principles applied to various departments of politics. . . . These essays are dictated by the conviction that there has been of late too much neglect of the principle that the [Liberal] Party is lost in detail, and that it is useless to put before the country long

* Of the six, all except Mr. Hammond had been President of the Union, and he was not the least brilliant of them.

programmes and minute schemes of particular legislation. But unless the country knows what general line measures will take, it will never give a mandate to the party of reform." These principles are stated as "Democracy actualised up to the full meaning of Bentham's formula ['the greatest good of the greatest number']; a degree of political idealism; and a third article intimately bound up with this last, a resolute opposition to the form under which the materialist attacks the State—Socialism." The editors then proudly quote some encouraging words recently written to one of them by Mr. Gladstone: "I venture on assuring you that I regard the design formed by you and your friends with sincere interest, and in particular wish well to all the efforts you may make on behalf of individual freedom and independence as opposed to what is termed Collectivism." After a short description of the body of the book, a warning that any essay might contain minor statements on which the other contributors did not agree, and the pious hope that "possibly in the future, essays on the House of Lords, the Liquor Traffic, and Disestablishment might be added to the present collection," the preface ends and Mr. Belloc begins.

We may note that at twenty-six he was already the author of a book of verse and the first volume of the *Bad Child's Book of Beasts*; anybody who cares to turn up this Liberal essay will, I think, be amazed at its maturity. Not only is it by far the best written of the six, but it is a finished exposition of nearly all the main principles for which Mr. Belloc has contended during the forty years that have since elapsed. For instance, "That a man should exercise thrift, that a man should own his own home, that a man should be removed* from the conditions under which he has to vote at the bidding either of another man or of material interests as pressing as any tyranny—these are the lines of action which they [the old Liberals] clearly marked out for us." Again, Mr. Belloc concedes that "the economic tendency appears to be against us," but turns this concession to advantage by insisting that Liberals must show "the economics of a period to grow out

* The text reads "not be removed," but this is either a misprint or the wording lacks the writer's usual robust clarity.

of men's conception of the State, rather than admit that they mould that conception." Again, "The conditions which industrial development has brought about in England are the very antithesis of those which Liberalism devises in the State: capital held in large masses and in a few hands; men working in large gangs under conditions where discipline, pushed to the point of servitude, is almost as necessary as in an armed force; voters whose most immediate interests are economic rather than political; citizens who own, for the greater part, not even their roofs. There could be no state more inimical to the ideals which the Liberals of Europe set before themselves."*

After these fireworks Mr. Hirst, who also has changed little through the intervening years, offered a consideration of "Liberalism and Wealth" which was calculated to infuriate readers not of his opinion as much as it may have pleased his friends. Thus, "There was a time, not very far back, when it was as natural and inevitable for an economist to be a Liberal as it is now for a licensed victualler to be a Tory. . . . Of course, the economist always remains at heart an advocate of Free Trade; but in the present epoch, when philosophic doubt assails every religion which is not established and every interest which is not vested, the professor of economics is developing into a casuist; he contemplates with stoical indifference the regeneration of a policy which he knows to be ruinous; and instead of teaching the broad truths by which his predecessors convinced a nation, he prefers to sow doubt among a chosen few by hunting up negative instances, rehabilitating lost causes, and endeavouring with every species of subtlety and refinement to make the worse appear the better reason."

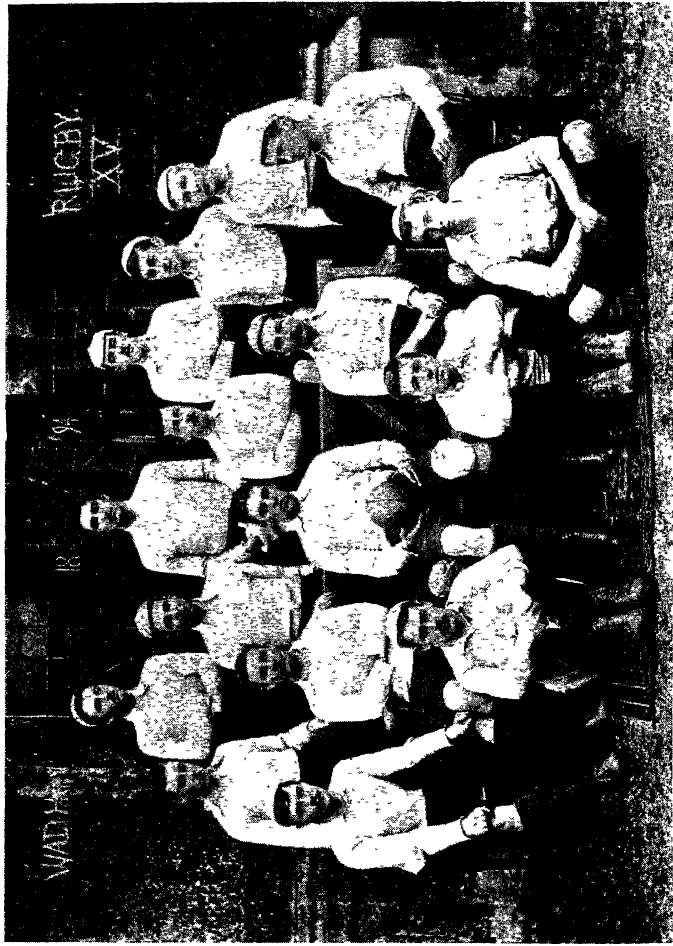
* It may, by the way, be observed that, since Mr. Belloc wrote this essay, the wider distribution of property—especially in land—has ceased in these post-war days of high taxation to represent the ideal which he saw in it. For instance, the small-owning peasants of France (who were always his favourite example) are to-day flocking into the Communist Party because they find their property much more of a tie than a means to freedom. So, too, co-operative and other schemes for distributing the ownership of industrial concerns, not to speak of profit-sharing devices, have notably failed to bring about the conditions which Mr. Belloc has always sought.

I do not propose, however, to follow Mr. Hirst in detail, but I will turn to "Liberals and Labour," by J. Allsebrook Simon.

"The title of this essay," he began, "is one which has long since lost all claim to novelty; its alliteration has been used by 'Labour' leaders to point a contrast and adorn a brand-new programme, and by 'Liberal' worthies to plead a natural affinity and to recommend a renewed alliance. For, serious as is the present position of the Liberal Party when regarded as in opposition to forces avowedly un-liberal in tradition and patiently illiberal in policy, the difficulties which meet it from without are insignificant by the side of the dangers which threaten it from the foes of its own household." He dealt first with the Socialist attack. In vain, he said, did the Socialists try to forget how Liberalism had fought in the past for the individual against vested interests and monopolies, for cheap food and for Parliamentary representation of the poorer classes.

This unreasoning hostility to the record, to the very name of Liberalism—a hostility displayed and encouraged by some of the men who owe most to the success of that Party in vindicating the rights of free speech and free combination—is, as has been said, an aggravation of the difficulties which surround the Liberal policy for Labour; but in itself the circumstance does not call for prolonged discussion, least of all does it justify insinuations of dishonest and selfish motive suggested by those whose honesty and disinterestedness in the past have often suffered under unfounded suspicions. Singleness of purpose, genuineness of emotions, are no less clearly traceable in the policy of the new Labour Party than ingratitude towards, and ignorance of, the achievements of older Liberalism; and there is no need to discuss the question whether, in public affairs, attacks of palpitation of the heart afford a complete excuse for actions which suggest a tendency toward softening in the head.

Liberalism, Simon claimed, would continue to fight the battles of the poor against the forces of capitalism, though,



WADHAM COLLEGE RUGBY FIFTEEN, 1894

[Simon is on the left of the back row, with C. B. Fry beside him Between them in the next row is the present Lord Roche F. E. Smith holds the ball in the centre of the group.]

"to employ a mathematical metaphor, it is only so long as the forces of capitalism are infinite, in comparison with the forces of labour, that the claims of capitalism can be justly neglected as infinitesimal in comparison with the claims of labour." So far Liberals had not had to consider what limits would some day have to be set to the rights of labour, but those Liberals were wrong who were prepared "to identify with Liberalism any proposal, however illiberal, any claim, however preposterous, if only it is alleged to be put forward in the interests of the working man." Alas! emotional Liberals went too far, and cool-headed Liberals, in seeking to avoid exuberant Socialism, fell back on antiquated Whig formulas: "A party of progress is betrayed no less by the stolidity of the Smug than by the flightiness of the Sentimentalist." It was not enough to answer each group of critics in turn by pointing to its rival's indignation. An army assaulted on both sides would find little comfort in the thought that, pressed back on one flank, it would have to face an equally vigorous attack on the other.

It was very sad, he went on, to see teetotal Liberals heedless of everything except temperance reform, and Nonconformist Liberals preparing to oppose Home Rule because the Irish Party wished to take advantage of State grants for Catholic schools, and Scottish Liberals "retiring in high dudgeon to the Highland hills" because the crofters' interests were not placed first in the Party programme. The question at issue was not tactics, but principles.

What were the principles of Liberalism as regards Labour? First, said Simon, the idea of securing individual freedom through the removal of restrictions, "the value to the citizen of free development as a factor in well-being," and "the evil, both to the character of the unit and to the welfare of the whole body politic, of every limitation set by law upon personal judgment and choice." The abolition of Protection and the removal of religious tests were, apart from their merits in themselves, expressions of the abstract principle that "the end of politics is, in general, best attained by a minimum of legislative regulation." Applying this to Labour, Liberals had sought to secure the individual wage-earner both *from*

legislative interference and, though it might seem paradoxical, *by* legislative interference; for, in existing circumstances, the maximum of free development could not be attained by leaving the labourer at the mercy of an overwhelmingly powerful industrial system. Thus, though the Liberal might join hands with the Socialists in placing fetters on certain sides of industry, "he cannot act from the same motive and with the same ideals in view. Even when aiming at the same change in the law, the object to be attained is widely different." The Liberals aimed at redressing the balance between employer and employee by very different means than the desperate Socialist desire to annihilate freedom of choice altogether:

To the former, civic individuality is so important a factor in well-being that the interference of the State is only tolerable where it promotes real freedom of choice by substituting legal restriction for the harsher tyranny of unequal circumstance. To the latter, the free play of private wills is to be swamped in a Utopia where all forms of competition are in themselves an evil, and a complete system of State regulation is elevated to the position of an absolute good. Between these two standpoints there is a great gulf fixed.

The Socialist (Simon admitted), mistaking identity of treatment for identity of diagnosis, might find it difficult to understand why Liberals approved the rigid State inspection of workshops but not the State ownership and management of those workshops; but the Liberal, provided he held fast to his principles and did not try merely to seek a compromise in "the path of least resistance between the impassable heights of Individualism on the one hand, and the treacherous quagmires of Socialism on the other," need find no difficulty in pursuing a right course. And Simon quoted Bradlaugh's dictum that "Parliament ought not to legislate on matters on which the people are, or reasonably ought to be, able to protect themselves."

Unfortunately, he agreed, "embittered and ignorant"

artisans denounced the older Liberalism when they heard such statements as this misapplied by greedy and selfish employers. All the more reason, then, why such fundamental Liberal principles should be rightly interpreted and honestly applied. How were they to be applied? Liberals must discriminate between the "taxable abundance" of the rich and the irreducible poverty of the poor, but without checking the stimulus to thrift by over-penalising success. They must demand better working conditions, but without seeing in State regulation a panacea for inefficiency or idleness. They must help the workman in his weakness, but not at the expense of handing his independence over to the State: "They will refuse to regard as their ideal a society where all will be equally free because all will be equally enslaved."

And so, finally,

It remains for Liberals, who have no special clients to serve and no special privileges to protect, to formulate and carry out wise social reforms, which shall be as far removed from the spasmodic concessions of Tories on the one hand, as from the stereotyped officialdom of Socialists on the other.

This was certainly an admirable essay for a young man of twenty-two. It is also an interesting example of Simon's skill, from that day to this, in elucidating a complex problem, steering a clear course between difficult depths and shallows and, without Mr. Belloc's dogmatism or Mr. Hirst's cynicism, setting out an appealing argument in a cogent but conciliatory manner.

It may also be regarded as the parent of most of his political utterances from that day to this.

CHAPTER TWO

DURING his last years at Oxford Simon travelled to London to eat dinners—which is the modern way by which a law student keeps his terms—at the Inner Temple and, when he came down from the University at the end of 1898, he passed his final examination and was duly called to the Bar. He had little money; most of his capital went to pay £50 for six months' tuition in the chambers of the late Sir Reginald Acland, who afterwards became Judge-Advocate of the Fleet. To his kindness Simon owes much: not least the fact that after the six months he was invited to stay on in the chambers and to devil there for his chief. Thus the first obstacle in his legal career was surmounted: whatever happened, he had at least the promise of briefs.

Like every other young barrister in those days and these, he at first found the law hard and unremunerative. Joining the Western Circuit, he earned only £30 in his first year—though this was a great deal more than many others earn in their first two or three years—and he used to make a little money by writing articles and walking down from the Temple to Fleet Street in the evening to offer them to editors; sometimes he had to visit two or three offices before he earned his guinea. When he was Foreign Secretary, more than thirty years later, he related to the Company of Newspaper Makers at a dinner in London that he was once invited by “a very great newspaper” to write a series of articles on the financial relations between Ireland and Great Britain: he added pleasantly that, during some recent official discussions with Mr. De Valera, he had felt what an advantage it would have been to the Free State if they could have provided themselves with those anonymous articles! He added, nevertheless, that the subject was one about which, when he wrote the articles, “I knew very little.”

His first brief came very soon after his call to the Bar. On April 7, 1899, he appeared at the Bristol Quarter Sessions to defend Robert James Rees, who was charged with conspiring

with a bailiff, William Dawson, to obtain money on false pretences from a certain Emmeline Upton. The sum in question was only eighteen shillings, but the defendants were alleged to have used the same method on several occasions. It was an ingenious but rather shortsighted trick: they obtained writ-forms of the Gloucester Tolzey Court, by whom Dawson was employed, showed these to various people who owed or were owed money, and collected debts for their own benefit. Dawson claimed that he had thought himself entitled to collect debts outside the strict limits of his duties, but Simon's client unfeelingly chose to plead guilty. The scope of the young barrister's eloquence, therefore, was limited to urging leniency on the Bench. He was fairly successful in this: Rees, who asked for numerous other offences to be taken into consideration, was sent to jail for a year, while Dawson, the smaller offender, received a six-months sentence.

After a few more one-guinea and two-guinea briefs in County Courts, Simon began his second year at the Bar by appearing in a civil case at the Bristol Winter Assizes on February 23 and 24, 1900. His clients were the Kingswood School Board, who had been joined with the local Urban District Council in an action for damages brought by a Mr. Wigglesworth, a manufacturer of woollen flock for bedding. The plaintiff had engaged the services of Mr. H. E. Duke, Q.C. (now Lord Merrivale), who was at that time the leading member of the Circuit and a very formidable person. His junior, by the way, was a young Inner Temple barrister (like Simon), named Thomas Inskip, who has since risen to high rank both in politics and in his profession. The Council was represented by another silk, Mr. J. A. Foote, with Mr. Clavell Salter—whom we shall meet again in these pages and who has since become a distinguished High Court Judge, affectionately known to the Bar as "Dry Salter"—as his junior. Simon was alone for his clients, and was naturally a little perturbed by the wealth of talent engaged by the other parties in the case. He had the consolation, however, of believing that the School Board had been included by mistake in the writ and that, unless something very odd happened, he would win their case.

The majestic Mr. Duke opened for Mr. Wigglesworth, who, he explained, used a seven-acre pond for the washing and cleansing of the flock he manufactured. To his horror, some of his customers had lately begun to send back his wares on the ground that they were "not quite sweet"; investigation showed that the pond had become polluted by sewage which was brought to it by a brook into which the Urban District Council had recklessly connected the drains from the local school—which was why the School Board was also sued. After evidence had been given to bear out Mr. Duke's statements, and after Mr. Foote, for the Council, had denied liability, the court adjourned till the next morning. Simon found himself faced with an awkward problem, in which his clients' money and his own prestige were concerned. "The great Mr. Duke spent a portion of the first day trying to persuade me to go away and pay my own costs," he has since revealed. (His meaning is, of course, that he should go away and let the School Board pay his costs; but barristers always tend to identify themselves with their clients.) "I nearly succumbed to his blandishments, and I spent a miserable night reflecting what would happen if, by daring to resist, I landed my unfortunate local authority with an extra one and sixpence on the rates." However, he decided to stand up to Mr. Duke, whatever the consequences.

Next morning the latter began the proceedings by saying that he would be satisfied with nominal damages of a shilling against the School Board; but Simon rose, outwardly calm, inwardly anxious, to contend that the Board ought to be dismissed from the case and to have its costs paid by the plaintiff. He argued that the school was entitled to use the sewers provided by the Council and was not in any way responsible for what ultimately happened as a result of this. When he sat down he had the satisfaction of hearing the Judge, Mr. Justice Wright, remark, "I cannot imagine why you were made defendants." He got his costs, and saved his clients. What was even sweeter, Mr. Duke's hand stole under the desk to press his arm and the great man whispered, "I'm so glad to see a new youngster sticking to it!"

Soon after this unforgettable compliment, Simon was

briefed to appear for several days before a committee of the House of Commons in connection with a private Bill; though his fee was not large, it was by far the best he had yet received and it gave material support to Mr. Duke's moral encouragement.

His next opportunity came in July, 1900, when he was instructed to prosecute a certain William Eastman Smart at the Hampshire Assizes in Winchester before Mr. Justice Kennedy. The prisoner, a man of thirty-two who was a surveyor by profession, but had lately been employed to collect money for the Singer Sewing Machine Company, was charged with "feloniously and maliciously setting fire to a stack of wheat valued at £150, the property of Job Pearce, at Abbott's Ann." Simon explained that his case rested on a nice foundation of circumstantial evidence. The prisoner had spent the evening of February 11 in the bar of the Black Swan public-house in the village of Monxton, some three miles from Andover; he left in the direction of that town just before ten o'clock, after buying a box of matches and some cigarettes and remarking, "I've a good walk before me." There were two inches of snow over the country. Soon after ten—at just the time he could reach Abbott's Ann—the rick went up in flames; a policeman who was called to the spot found a man's tracks in the snow leading from the road to the rick and back again, and also a piece of a Southampton newspaper of the previous day. Having recognised Smart on the road, the policeman went after him and found the rest of the paper in his pocket, while his boots exactly fitted the tracks in the snow, but he denied having fired the rick. Incidentally, no sort of motive seems to have been suggested for the crime, though the man was certainly unbalanced.

His story in court was that he slipped and fell ill near the rick, rested under it and lit a cigarette, the match from which might by accident have set fire to it. He denied having deliberately started the fire, and said that the newspaper produced by the police was not his; they had substituted it to manufacture evidence against him. In answer to Simon, he agreed that he had been engaged by the police in the previous November to prepare plans in regard to another arson case;

he had not done the work, but had gone to London and tried to jump off Waterloo Bridge rather than face the consequences of not fulfilling his task. The jury recalled the policeman to rebut the charge of inventing evidence and then, after nearly half an hour's indecision, found Smart guilty. He was sentenced to eighteen months hard labour.

October, 1900, brought Simon a windfall in the shape of a brief for the Siamese Government in a railway arbitration case before Sir Edward Clarke. He owed this brief, it would appear, to the fact that Professor Max Müller at Oxford, being an authority on Oriental philology and philosophy, was quaintly supposed to be an expert in other matters involving Eastern interests; the Siamese Government asked him to recommend a barrister to advise it in its case, and he suggested Simon, whom he had known at the University. Fortunately for him and Simon, the latter showed himself fully competent.

A year later he received his first brief to defend a man on a charge of murder. Henry Curtis, a butcher, was charged at Bristol Assizes on December 4, 1901, with murdering his wife. Mr. Kinglake and the late Sir Percival Clarke, the son of Sir Edward, prosecuted; Simon was alone for the defence. The evidence was curiously melodramatic. Some of the prisoner's children testified that their mother had been drinking on the evening of the crime and had turned one of her elder sons out of the house, telling him to find a home of his own; then she broke a window and her husband rushed in; they quarrelled, and a daughter went to fetch the police. While she was gone, another son, who was in the yard at the back of the house, saw on the blind the shadow of a hand raised to strike a blow, while the smallest child, a little girl of eight, was actually in the room when her father struck her mother several blows on the head with a meat-chopper. "I don't know why father did it," she told the policeman when he arrived; "mother didn't do nothing to make him do it." The woman was taken to hospital, where she lingered unconscious for some weeks before she died.

It looked bad for his client, but Simon made a bold defence for him. "I do not intend to suggest that the woman met

her death in any other way than that described by the prosecution," he said, "but what I ask you to say is whether the facts do not justify your returning a verdict of manslaughter or of not guilty." The fatal blows, he argued, were struck in self-defence. "The controlling influence in this house was the violence of the woman. The man was afraid of her. What evidence is there really available of what was going on immediately before the violence? I suggest that, instead of the man having attacked the woman with a murderous motive, it was the man, on the contrary, who was attacked by the woman. As for the shadow of the hand seen on the window-blind, *it might have been that of the woman—raised to assail her husband!*" He pointed out also that there was clearly no premeditation in his client's act, because the blows were not struck till some time after the window was broken and he had entered the room. The jury took only five minutes to find Curtis not guilty of murder but guilty of manslaughter. Simon's defence had saved his life, but—rather mercilessly, as it seems to-day—he was sentenced by Mr. Justice Bruce to fifteen years' penal servitude.

Only two others of these very early cases need be mentioned for the light they throw on Simon's ingenuity.

On circuit in Winchester he received a dock brief—that is to say, the defendant chose him haphazard from the barristers in court—to defend a young German waiter accused of stealing a bicycle. The Judge was the late Lord Mersey. The case set out by the prosecution was strong, but the hearing was complicated by a doubt about the prisoner's knowledge of English. He insisted on having everything translated into German for him by the court interpreter, and the Judge became noticeably uneasy at the amount of time which was being spent on this comparatively unimportant case. To expedite matters, he at one stage put a question to the prisoner in German, but the latter tactlessly appealed to the interpreter for a translation of it and so raised a laugh at the Judge's expense. Last came a police witness, a stolid Hampshire constable who gave evidence, notebook in hand, somewhat on these lines: "Acting on information received, I went to the public-bar of the So-and-So Hotel where I saw the prisoner.

I said to him; 'Did you come here on that bicycle?' He said, 'Yes, I did.' I then said to him, 'Does that bicycle belong to you?' He said, 'No, it belongs to a friend of mine who has been kind enough to lend it to me for the afternoon.' "

"Stop, officer!" cried the Judge suddenly. "In what language did you hold this conversation with the prisoner?"

"In English, m'lud," said the policeman, who was certainly incapable of speaking any other tongue.

"What! Does he understand English?"

"He did when *I* spoke to him, m'lud."

The Judge stared at the wretch in the dock. "Proceed, officer!" he said grimly.

Simon felt that things were not going too well for his client, and, when his turn came, took refuge in audacity. "How would you feel if you were put on trial in a German court?" he asked the jury pathetically. "Even if you knew a little German, you wouldn't really understand everything that was going on, would you? Their methods in court would be strange to you, wouldn't they; and"—he turned a preternaturally solemn face towards the Bench—"even though the Judge, like my Lord here, possessed, as we have seen, a perfect command of your own language, you would still feel a little lonely, wouldn't you?" And so on until the jury wilted and acquitted the prisoner.

When the court rose, Lord Mersey sent for Simon. "You're a very impudent young man," he said, not unkindly, "but you will get on."

In the other case he defended a man against whom the most damning evidence was an ironmonger's recollection of certain circumstances. The day before the case came on, Simon went to the ironmonger's shop and bought a small piece of wire. In court the witness duly gave his evidence, and Simon rose to cross-examine.

"I suppose you remember all your customers?" he began quietly.

"Certainly," the ironmonger replied.

"So you would naturally remember those who went into your shop yesterday?"

"Yes, every one."



OFFICIALS OF THE OXFORD UNION, 1896

Back Row J. L. Hammond, the Steward, W. K. Stride, M. E. C. Bruce, J. S. Phillimore
Middle Row: J. S. Bradbury, F. E. Smith, P. J. Macdonell, Hilaire Belloc, J. A. Simon.
Front Row: Archibald Boyd-Carpenter, F. B. Bradley-Birt

"I suppose there's nobody in court who came into your shop yesterday?"

The ironmonger looked round carefully. "No, nobody."

Simon then produced the piece of wire and compelled the witness to admit that he had sold it to him. Though Simon in wig and gown must have looked rather different from the tall, thin, unobtrusive youth who had entered the shop, the witness's evidence no longer carried conviction to the jury.

The most widely reported of the cases in which he appeared in 1902, his fourth year at the Bar, was the trial of Mrs. Penruddocke at Salisbury Petty Sessions and afterwards at the Old Bailey for cruelty to her six-year-old daughter. Simon's client belonged to one of the oldest county families in Wiltshire, and her prosecution by the Society for the Prevention of Cruelty to Children naturally made a sensation. It was suggested that, whilst she treated her other children kindly, she tormented her youngest daughter, Letitia, with continual acts of petty persecution until she made the child's life miserable. For instance, the prosecution declared at the Petty Sessions, when the little girl asked for a raisin out of her mother's piece of cake, Mrs. Penruddocke filled it with mustard and handed it to her to eat. The child was found to be undernourished, and it was alleged that she was allowed only one slice of bread and butter for her morning and evening meal, while her dinner consisted of potatoes. Various other cruelties were alleged, such as that the child was made to stand for hours in the fork of a tree, often in the rain; that she was deliberately knocked by her mother into a bed of stinging-nettles; that her pigtail was tied painfully to her side; that Mrs. Penruddocke dropped a wasp down the girl's neck, and that she beat her with a heavy whip. Witnesses declared that Mrs. Penruddocke had said she wished the child out of her way. The principal witness, of course, was the child herself. Simon prudently made no attempt to cross-examine her at the Sessions Court; to have done so would probably not have helped his client in any way, for the magistrates were certain to send her for trial, while it would have disclosed weaknesses in the prosecution's case which

were afterwards to put a very different colour on the charges. There was no point in forewarning the other side.

On account of the local excitement, it was thought best to remove the case from the local assizes to the Old Bailey, where Mrs. Penruddocke duly appeared. This time the child was cross-examined, and it was now learned, for example, that she could climb out of the tree by herself and that, if it rained while she was there, she used to return to the house; further, she said that the wasp which her mother had put down her neck was dead and had not hurt her at all. On the other hand, she insisted that she was sometimes left so hungry that she had eaten the dog's dinner. The doctor who gave evidence for the prosecution was forced to admit that the girl's weight was three pounds more than the average weight of her age, as listed in the Society's own handbook, and he agreed also that a child suffering, as she was, from a certain complaint ought not to be given much meat; she should, however, he pointed out, have been given much more nourishing food. Mrs. Penruddocke went into the witness-box to tell her story. She denied having wished the child out of the way, and expressed surprise that her treatment was considered cruel. The child's diet, she said, had been chosen for the sake of her health, and the punishments were given to cure bad habits. As for the pigtail-tying, Mrs. Penruddocke said that, if it had happened at all, it was to correct a crooked shoulder. Though she had never possessed a whip, she admitted beating her daughter with a switch, but denied all recollection of the raisin and the stinging-nettle incidents and the eating of the dog's dinner. She explained that diet and punishment had cured another of her children of the bad habit which Letitia had contracted, and that she had therefore repeated the treatment. Her only motive, she pleaded, was the little girl's welfare. Her husband's evidence supported her version of the facts.

Sir Edward Clarke, who led Simon for the defence, dealt at great length with the right of a parent to chastise her child. He pointed out that the Society could not interfere with that right, nor did any Act of Parliament infringe on it, except in cases of real injury to the child. Chastisement necessarily

implied some suffering, or there would be no point in giving it. The parent, he claimed, was the proper person to decide when punishment was due, and in this case Mrs. Penruddocke had decided that it would be of benefit to the child by curing her of bad habits. She had not been cruel for any other reason, and the child's sufferings—which were now seen to be far less severe than the prosecution had at first suggested—did not constitute permanent injury. Therefore, Sir Edward submitted, there was no ground for the charge, and he asked for his client's dismissal.

The Judge, Lord Mersey, discussed the legal position only. He told the jury that they must distinguish between salutary punishment and the unnecessary infliction of suffering. He added that he knew of no tribunal better able to draw this distinction than such a jury as they were. He accepted some of the contentions of the defence that a parent had the right to chastise her child and that the Act under which Mrs. Penruddocke was charged did not operate in cases where the punishment was for the child's benefit and to correct her faults. If the jury had reasonable doubts, they should give their verdict in favour of the defendant, but they must not let sympathy for either party deflect their judgment on the main issue. The jury, thus instructed, retired for half an hour and then returned to ask the Judge to repeat his legal directions. He did so, and they went out again. Ten minutes later they brought in a verdict of guilty on the charge of ill-treating the little girl, but not guilty on the charge of assaulting her. They added a rider, censuring the father for having countenanced the ill-treatment.

On this, the defence pleaded that Mrs. Penruddocke had a weak heart and was in a generally weak condition, apart from having already been severely punished by the ordeal and publicity of the trial; would not the Judge consider a fine sufficient penalty? In passing sentence, Lord Mersey said that he was naturally sorry that the jury had felt obliged to arrive at their conclusion, but he could not say that they were wrong in so doing. He thought that imprisonment would be an unnecessarily harsh punishment for Mrs. Penruddocke, whose offence might not be so grave as had at first appeared;

and he was ready to risk criticism by not sending her to jail but only fining her £50. The chief object of the prosecution, he added, had been secured, for the little girl was not to return to her mother's house.

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Sensational cases apart, he was building up a solid and remunerative practice. Indeed, he won success with quite exceptional speed. Early in 1903 a vacancy occurred for a clever junior to represent the railway companies before the Railway and Canal Commission, highly specialised and difficult work which was correspondingly well paid. Mr. Acland's Devonshire connections had associated him with the South-Western Railway, and through him railway briefs came Simon's way. Showing that he was well able to find his way through the technical intricacies and was naturally endowed with lucid persuasiveness, he stepped into the gap. A big Great Central Railway case came along, which not only brought him into contact with the leaders of that Bar and attracted their favourable notice to him, but also put his finances at last on a sound basis.

Moreover, the great Sir Edward Carson, then Solicitor-General, liked him. Simon devilled for him a great deal and spent part of a summer holiday with him in the country, working hard every morning on the preparation of the important Alaska Boundary case and playing cricket or riding or walking in the afternoons. When the work was finished and Simon was leaving the house, Carson called after him, "Where are you 'going from here?" Thinking that the Solicitor-General intended to send him a friendly letter of appreciation for his industry, the young man wrote down his address: he was going north, to Scotland. "Have you a frock-coat?" Carson then asked, and, much surprised at this question, Simon said he had. When he reached Scotland he found a telegram from the Treasury Solicitor telling him to come back to London at once, as he had been appointed junior counsel in the Alaska case, the hearing of which began two days later.

It was a tremendous stroke of luck, for the arbitration was

certain to be long, expensive, and of historical importance. The United States had purchased Alaska from Russia some years previously, but a dispute had arisen between them and Canada over the interpretation of an earlier treaty between Canada and the former owners, which defined frontiers by phrases as vague as "the summit of the mountains parallel to the coast" and "a line parallel to the windings of the coast." The British Government offered to arbitrate, and appointed Lord Alverstone to judge the dispute. The United States were represented by Elihu Root, the Secretary for War, Senator Lodge, and ex-Senator Turner. The British case was presented by Sir Robert Finlay, K.C., the Attorney-General, Carson, and four leading K.C.'s of the Colonial Bar. And now Simon was added to their number, thus being publicly associated with these very distinguished lawyers. Even though in the end Lord Alverstone decided on most points for the Americans, Simon's participation in this outstanding case—and the satisfaction with him expressed by his leaders—meant that he must now be regarded as having "arrived."

He was barely thirty. If it be argued that he was fortunate in finding such openings so early in his career, the point may be made that most successful barristers seem to be equally lucky in one way or another. Nobody can suppose that, even had he not been to some extent aided by fortune, Simon would have failed to carve out a great career at the Bar; we shall see that he later became the most versatile of advocates, practising with equal success in the King's Bench and the Chancery Divisions, before the Court of Appeal, the House of Lords and the Privy Council, as well as in the Divorce Court (where he made a rule to appear in one case every year), the Old Bailey, and the confined sphere of the Railway and Canal Commission and similar tribunals. Indeed, one of his longest briefs was a hideously technical patent case about the gyroscopic compass. He even excelled in another department where only a few specialists acquire merit—licensing work. Solicitors have told me that, in his later days at the Bar, the cordial manner with which he greeted licensing magistrates as they entered the court practically won his clients' cases before the hearing began.

This versatility was deliberate, though it was in contrast with the usual practice of barristers. Simon from the beginning set to work to build up a reputation as a man whose legal opinion, as well as his advocacy, could be trusted in the most diverse matters. Strangely enough, for they are very conservative people, solicitors liked it. Thus there came about what he considers to have been his greatest good fortune, that within a few years of his call to the Bar solicitors trusted him with cases of importance in the County Courts and the High Court which would not "stand a leader"; that is to say, the amounts involved in which did not warrant the briefing of a K.C. in addition to himself. This was not so immediately profitable as being briefed with a leader, but, as every barrister knows, there is nothing more advantageous in the long run than being entrusted with "good" cases which one has to do oneself.

From the outset Simon's merits as a lawyer lay in his power to analyse and clarify complicated issues—the more voluminous the facts and documents in a case, the simpler he seemed to make it; the conciseness of his arguments; the sweet reasonableness with which he invested his case; and the impressive absence of any apparent attempt to pander to the emotions of a jury. His method in court was simple but subtle: he would state the point of law and his proposition, and would argue in such a way that the conclusion—favourable, of course, to himself—followed logically and inevitably from the premises. He was not so much persuasive as compelling. A friend of mine who appeared against him in a case before the House of Lords tells me that "There were two points which I thought Simon could not answer. He approached the first, stated it faultlessly, and then proceeded to deal with it—and was discussing something else! I thought, 'This is odd; I must see exactly how it is done.' He came to the second point, and the same thing happened. But when or how the break occurred I could not determine. It was within three sentences, and that is all I know." If he sometimes failed, it was perhaps through the defect of this method: a well-known lawyer once whispered that Simon was like a conjurer playing with coloured balls; it looked

wonderful, but one might sometimes wait till an individual ball was momentarily at the top of its flight and then bring it down. In general, however, as an envious rival remarked, "It's as though you put a penny in the slot at one end, and the verdict pops out at the other."

As a cross-examiner he always treated his victims with disconcerting politeness, acknowledging a shrewd reply with a kindly smile and promptly demolishing it with another question. He had, to be sure, no patience with the old-fashioned type of cross-examination favoured by Sir Edward Clarke and others, who asked a witness a number of sometimes unrelated questions, accepted the replies with such pleasant little comments as "As you will" and "Be it so," and waited until they made their formal address to the court before linking up in a coherent argument all the information obtained. Like Carson, Simon believed that in cross-examination the first question was all-important. It must go to the root of the matter he wished to establish, whether this was a point of fact or merely to show the unreliability of the witness; in any event, the court could not for a moment fail to appreciate what he was trying to do.

To support his intellectual qualities, Simon was blessed with astounding physical strength and vitality, which enabled him to work hour after hour at a pressure which would have reduced most of his rivals to pulp. Without extreme good health few men succeed at the Bar, and Simon has always been happy in this respect.*

It was not long before Carson and F. E. Smith could agree in conversation that Simon was the greatest all-round advocate of their generation, with the possibly implied exception of Smith himself and with the reservation that Carson was a more devastating cross-examiner. Simon, by the way, was Carson's junior in a case which produced an immortal incident. The issue was something to do with a right-of-way,

* He has told us of the tradition that "there are only two things needed for success at the English Bar: the first of them is a good clerk, and the second is a good digestion" (speech to the Canadian Bar Association, Ottawa, September 7, 1921). He had both. His former clerk, Mr. Ronald Pocock, is a well-known and respected figure in the Temple, where indeed he is still active.

and the other side produced an apparently endless stream of witnesses who repeated the same evidence to an increasingly somnolent audience. One of the long series of countrymen was called and once again reiterated the same statements. As usual, Carson whispered to his junior, "Anything known about this fellow?" "Nothing," Simon whispered back. But Carson rose to cross-examine; glaring at the witness's rubicund face and, as was his habit, shamelessly exaggerating his natural Irish brogue, he rapped out, "They tell me that ye drink!" "That's *my* business," the witness protested. "Any other business?" asked Carson.

As had already happened at Oxford and was soon to be the case in Parliament, he and Smith were marked out at the Bar as rivals. The similarity in their ages and in their swift rise as lawyers led to all sorts of comparisons being drawn between them. The popular idea perhaps was that they represented the industrious and the idle apprentices: Simon's apparent solemnity and Smith's apparent dash were regarded with almost partisan feelings by their admirers. Yet the comparison was unjust to both of them. Smith, as everybody who knew him well was aware, could and did put in a phenomenal amount of concentrated hard work when this was necessary; Simon, on the other hand, always had an unsuspected streak of laziness in him. But, as both men prospered and their partisans were satisfied with the legend, it did no harm to either of them.

There was, however, an underlying reason for Simon's lack of lightheartedness in his work and his personal contacts. He was certainly serious by nature but, in addition, he was oppressed by an overwhelming grief. Early in 1899 he had married a young student whom he met at the University, Miss Ethel Mary Venables, a niece of J. R. Green the historian; it was a notable act of courage and mutual confidence on both sides, for Simon had only just been called to the Bar, and his circumstances and his future alike were precarious. Only three and a half years later his young wife died in childbirth, leaving him a widower with two daughters and a new-born son. Opening a maternity centre in the Spenn Valley in 1936, he was to say, "I know in my own life what it is for a son to

be born at the moment his mother dies.”* He was only twenty-nine when this load of sorrow and responsibility was thrown on his shoulders. No wonder that he set himself grimly to his work: apart from every other consideration, this became a drug for memory and a solace for loneliness. It was a case of “sticking to it” or breaking down; and three young lives besides his own depended on his efforts. No wonder, too, that the notion grew among strangers that he was self-centred, cold, aloof: he had good cause to sink facile social contacts in grim absorption in his work. Had these early days not been shadowed by the tragedy of his wife’s death, the outside world would surely have received a very different, and much more true, impression of him.

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To end this record of his early years, I may mention the McCulloch-Brailsford case in 1905, which presented a neat problem for criminal lawyers. Simon was led by Sir Robert Reid, K.C. (who, as Lord Loreburn, became Lord Chancellor the following year), and between them they defended two men, Brailsford and McCulloch, on a charge of conspiracy. The Crown alleged that the defendants had combined together and obtained a passport by false pretences: McCulloch, with his friend’s aid, procured a passport for himself by saying that he needed it to go to Russia for a pleasure-trip, but his real purpose was to send it to another man, already in Russia, to use in his name. The facts were revealed a few months later when the passport was found on the body of a stranger who had been killed by a bomb in a St. Petersburg hotel. The charge against McCulloch and Brailsford said that they had acted “to the injury and prejudice and disturbance of the lawful, free and customary intercourse existing between the liege subjects of our Lord the King and the subjects of the Tsar of Russia to the public mischief of the said liege subjects and to the endangerment

* It was on the evening of the first hearing of the Penruddocke case at Salisbury, with its sordid story of maternal cruelty and childish suffering, that he had hurried back to a nursing-home in London to learn that a son had been born to him at so cruel a cost.

of the continuance of the peaceful relations" between the two countries.

It did not say, however, that the conspiracy was done *with intent* that these things should happen.

Simon found this loophole—for the state of mind of an accused person is always a fundamental ingredient in the constitution of a criminal act—and the defence was conducted on the basis that, even if all the alleged facts were true, they did not constitute an offence known to the law. If, Simon argued, it had been charged that the passport was obtained *with intent* to endanger peaceful relations between the two countries, then there might be grounds for a conviction; but, as the charge stood, the facts did not amount to a criminal conspiracy.

The prosecution's answer to this was that there was no necessity to prove that the defendants intended the "mischievous consequences" of their acts; it was enough to prove that these consequences were the natural results of the wrongful acts. The Lord Chief Justice, Lord Alverstone, told the jury in his summing-up that their only task was to decide whether the defendants had obtained the passport by false pretences; he, as Judge, ruled that the acts, if committed, constituted a criminal offence. The jury found both prisoners guilty, and they promptly appealed against the Judge's ruling.

Simon and Reid now repeated their argument that to justify a conviction, criminal intention must be established; and they added, as a second ground for setting aside the conviction, that this was a question for the jury to decide, not for the Judge. For the purposes of argument, they accepted the Crown's contention that "mischievous consequences" imply a previous criminal intention, but they claimed that the jury should have been allowed to say whether "mischievous consequences" had indeed followed from the proved facts: it was not enough to show that the passport had come into the hands of a man who might have been a criminal, but the prosecution should have brought evidence to show that what the prisoners had done tended in itself to produce a public mischief. The court,

however, upheld the conviction, pointing out that a man is legally responsible for the natural consequences of his acts, and that a Judge may direct a jury whether or not particular acts may tend to the public mischief.

NOTE.—I am indebted to the editors of the *Western Daily Press* (Bristol) and the *Hampshire Observer* (Winchester) for aid in tracing two of Simon's very early cases. The editor of the latter paper, by the way, has mentioned to me in a letter that "the writer has a vivid recollection of being cross-examined for three-quarters of an hour by Mr. Simon early in the century. Though his cause was just, he was tied completely into a knot until the Judge came to the rescue."

CHAPTER THREE

WITH success at the Bar now secure and already enjoying a considerable income, Simon was able to turn more vigorously to his major interest, politics. From the beginning he had regarded the law as a stepping-stone to a political career, as a means of earning one's living and training oneself for the arguments and debates of Parliament. Ever since his undergraduate days at Oxford he had been appearing on Liberal platforms throughout the country; in 1905, at the age of thirty-two, he was at last given a sporting chance to enter the House of Commons. On April 12, "Mr. J. A. Simon, M.A.," was adopted as prospective Liberal candidate for the North-East London constituency of Walthamstow. He had been offered by Herbert Gladstone, the Chief Liberal Whip, the choice of several seats (subject, as is always politely said, to the agreement of the local political committee). Some were near London—Walthamstow being the nearest—and some were farther away from his work. He decided to consult the future Lord Haldane, who had led him in one or two cases and shown kindness towards him and whom he had also met socially. Going to the House of Commons, he sent in his card to Haldane, who soon came out to the lobby. "What I want to ask you, Mr. Haldane, is this," Simon explained. "I am going to stand for Parliament, and two or three seats have been offered to me; but I don't know which to fight, because I am a junior who is beginning to get busy at the Bar. What do you think of Walthamstow?"

Haldane leaned his vast bulk back on the bench on which they both sat. "Well," he said judicially, "for a barrister practising in London, Haddington [his own Scottish division] is a very good constituency, but Orkney and Shetland is a better!" The meaning of this somewhat cynical observation was that a busy lawyer sitting for such distant places was unlikely to be much troubled by the demands of his con-

stituents. Haldane's advice was, however, misplaced; at least, he confused his position as a K.C. and a Party chief with Simon's as a junior and a political débutant. For a busy junior with Parliamentary ambitions, who cannot afford to put off legal appointments made by his leaders, it is more convenient to have a seat near London than one which necessitates long, even though rare, journeys: Simon was to find no difficulty in doing his work during the day in the Temple and the courts and then hurrying off—without dinner, it is true—to keep a date with his constituents in Walthamstow, thus breaking faith with nobody but impressing everybody with his industry.

Walthamstow, which after Romford had the largest number of voters in the whole country, was originally Liberal in sympathy, but at the last few elections it had been won by the Tories;* except in 1897, when a "Liberal and Labour" candidate named Sam Woods had scraped in by 279 votes, only to be turned out three years later by a Mr. D. J. Morgan. The latter now let it be known that, on his doctor's advice, he would not seek re-election at the General Election which everybody knew could not be delayed much longer. Mr. Shard, a local solicitor, was chosen by the Tories to succeed him, and Simon was spared the prospect of having to try to unseat a sitting member, always a difficult task. For a time the Socialists, too, threatened to put forward a candidate, whose intervention would certainly have split the "progressive" vote; the size of the constituency, however, made it unlikely that they could afford to fight it, and Simon's sponsors considered that he could rely on a solid vote against the increasingly unpopular Tory Government. During the course of the year the prospective Liberal Prime Minister, Sir Henry Campbell-Bannerman, and his lieutenant, Mr. John (later Lord) Morley, addressed meetings in Walthamstow at which they used their influence to recommend Simon.

The long-awaited contest came at the end of the year. On December 4 Mr. Balfour resigned, and King Edward VII.

* By a majority of 1,822 in 1886, of 1,150 in 1892, and of 2,353 in 1895.

sent for Sir Henry Campbell-Bannerman, who soon decided to appeal to the country.

Simon had already addressed a few public meetings in the constituency. The only record which I have been able to find refers to one held at Highams Park on November 14. There, in answer to the question, "Are you in favour of legislation to prevent diseased or criminal aliens coming into the country?" he replied unhesitatingly, "Yes." If only all questions could be so easily answered!

His first important meeting of the real campaign was at the Goodall Road schools on December 30. He told his audience that, "There is only one thing which stands between this country and Protection, and that is the Liberal Party. The Conservative Party have done what they like for a generation; they have had an unrivalled opportunity to do good, but they have only done mischief." Amid loud applause he turned to a matter which, by the shrewd electioneering tactics of the Liberal Party, had somehow become a prime feature of the campaign. "The Liberal Party will have nothing to do with Chinese labour in South Africa," Simon said; "Chinese labour makes dividends high and wages low." It is not clear that South African labour conditions were likely to affect Walthamstow wages, but the point was well received. He passed on to unemployment: "It is the duty of the State to do all it can for the deserving unemployed"—how this terminology dates the period!—"but it is scandalous to say that Tariff Reform will cure the unemployed question."

In conclusion, says the local paper I have consulted, the *Walthamstow, Leyton and Chingford Guardian*, "Mr. Simon admitted that he was in favour of Home Rule for Ireland, and the admission was loudly cheered." To recognise why adherence to Home Rule should have been regarded as an "admission" from a Liberal candidate at this time, we must recall that a number of Liberals had seceded twenty years before to the Tory Party because they disapproved of Home Rule; it might be hoped that some of these "Liberal Unionists" would return to their former allegiance if emphasis were placed on the Free Trade issue and diverted, as far as

possible, from Irish affairs. The Tories, naturally, were anxious to tar Simon with the Home Rule brush, in order to deter Free Trade Unionists from supporting him.

At a subsequent meeting at the Warwick Road school he is reported to have said, "In regard to the abolition of the House of Lords, I prefer a body that is elected by the people to those who are begotten." There is clearly a slight lapse here on the part of the reporter; even elected Liberal Members of the House of Commons come into the world in the usual way.

Though the threat of a Labour candidate had vanished and Simon might expect the general support of the Socialists in the division, there were evidently some recalcitrants, for, when the chairman moved the usual resolution of confidence in Simon, a member of the audience presented an amendment, "That the working-classes of this constituency consider that no one outside their own class, either of the Liberal or Conservative Party, can represent them; and consequently in voting for Mr. Simon they would be traitors to their class." Laughter and loud hisses greeted this suggestion (which may well have been pre-arranged by the local Conservative organisers) and only three people voted for it. In general his meetings were tranquil enough, except for the enthusiasm of his supporters, but his opponent's were not. To quote the local paper again, "The meetings held in the interests of Mr. Simon have been singularly free of interruption, but this cannot be said of the meeting at Leyton Town Hall on Monday in support of Mr. Shard." Whatever else that meant, it was clear that Simon had consolidated the "progressive" vote.

A heckler at another meeting asked him again if he was a Home Ruler. Simon again "admitted" that he was, but insisted that not Home Rule but Free Trade was the dominant issue of the contest. At a gathering in the Leyton Public Baths, however, he went even farther to placate the Unionist Free Traders. The Liberal Party, he reminded them, was pledged not to introduce Home Rule for Ireland in the next Parliament. "If such a Bill is introduced," he promised, and it was a safe thing to promise in the circum-

stances, "I shall resign my seat, so that the constituency can then decide who shall represent it on this issue." And to emphasise the main point he wished to impress on them, he published the following appeal on the hoardings and in the local press:

VOTE FOR
SIMON

FREE TRADE

FREE FOOD

FREE MEN

Voting in those days took place on various days in different parts of the country over a period of a fortnight or so. Walthamstow polled late, and Simon was heartened by the results which came in from other constituencies, and showed that, as he told an eve-of-the-poll meeting at the Walthamstow Baths, "The tide of Liberalism throughout the country is like a roaring, rushing avalanche." The metaphor was mixed, but the facts were indisputable.

On polling-day at the end of the third week in January, a Tory donkey paraded the division painted in the blue colour of his owner's party. The Liberals at once retorted by painting a dog yellow. One sees the difficulty they were in: their opponents were blue, while they, in view of the rising Socialist menace, no longer cared to affront timid middle-class voters by sporting the rival red. The third traditional colour of British politics is buff, but sympathisers with Irish Home Rule might well be shocked if the Liberals displayed a seemingly Orange flag; yellow therefore was used, and perhaps it helped to remind partisans of the "Chinese Slavery" campaign.

The result of the poll was declared on January 24. Simon received 15,011 votes, obtaining a majority of nearly four thousand over his opponent's 11,074. He had succeeded at his first attempt to enter Parliament. "Mr. Simon," said the shrewd *Walthamstow, Leyton, and Chingford Guardian*, "is undoubtedly a most capable man."

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Unlike his old Oxford rival, F. E. Smith, who also had entered Parliament at this election and soon electrified it with a sensational maiden speech, Simon did not hasten to address the House of Commons. His first individual act there was to put down a question to the President of the Local Government Board on May 3, 1906, about a provisional order for an extension to the Woodford and Wanstead Joint Hospital, which was in his constituency. On July 31, nearly three months later, he asked another question, this time of the Foreign Secretary:

Whether his attention had been called to a collision which occurred in Golden Lane, E.C., on May 1, 1906, between a motor-car belonging to the Marquis de Jacome Correa, of the Portuguese Legation, and driven by the Marquis's chauffeur, Emile Brouard, and a bicycle belonging to and ridden by Mr. F. Broomfield, of 8, Boundary Road, Walthamstow, whereby Mr. Broomfield was seriously injured and his bicycle damaged by the negligent driving, as Mr. Broomfield alleges, of the Marquis's motor-car; and whether, inasmuch as both the Marquis and his chauffeur are protected by their diplomatic immunity from proceedings being taken against them in the English courts, but it is competent to the Marquis to waive this immunity as regard his chauffeur, the Secretary of State will represent to the Portuguese Legation the propriety of waiving this immunity to this extent, so as to enable Mr. Broomfield to sue the chauffeur for damages for negligence.

To this Sir Edward Grey replied that "The facts stated in the question are being brought to the notice of the Portuguese Minister. But, as the matter is one of diplomatic privilege recognised both here and abroad, no other action can be taken by His Majesty's Government." Which disposed of the matter to the satisfaction of everybody, except, presumably, Simon's constituent.

Two days later he put down another question, equally long, to draw attention to delay in adjusting claims for repayments of Income Tax at Somerset House and in local Inland Revenue offices. Then, on August 3, he made his maiden speech.*

Its occasion was the Trade Disputes Bill, a measure introduced in fulfilment of a Liberal pledge to meet the effects of the Taff Vale judgment of 1901, which had established the legal responsibility of a Trades Union for damages caused by the action, authorised or unauthorised, of its officials and member—which judgment, by the way, cost the Taff Vale Railway Company's strikers £50,000 and was largely responsible for the Unions entering politics. The aim of the Bill was to secure Trades Unions against such damages, thus, so the Tories argued, placing them above the law. In the Committee stage the Attorney-General, Sir John Lawson Walton (who, like Simon, was the son of a Free Church minister), introduced the following new clause, which set out succinctly the purpose of the Bill:

An action against a Trades Union, whether of workmen or masters, or against any members thereof on behalf of themselves and all other members of the Trades Union, for the recovery of damages in respect of any tortious act alleged to have been committed by or on behalf of the Trades Union, shall not be entertained by any court. . . .

Sir Edward Carson, who with F. E. Smith was the most vigorous spokesman of the Opposition, at once attacked the clause. "The Government," he commented, "might as well have said, 'The King can do no wrong; neither can a Trades Union!'" and he repeated the usual arguments against the Bill. When he sat down, Simon rose on the Government benches, a slim, youthful figure, unknown by name, sight, or reputation to almost all the House. But the firm though modest manner with which he began to speak and the per-

* Curiously, in a selection of his speeches, *Comments and Criticisms*, published with his approval in 1930 by his secretary, Mr. D. Rowland Evans, there is printed as his maiden speech one which he delivered on November 9, more than three months later.

suasive logic of his arguments at once held his audience and stopped the flow of Members from the House who had supposed that Carson's sarcasms would be followed by a period of stonewalling from the other side until a Minister was ready to wind up the debate.

"I am afraid it cannot be palatable to all the Members of the Committee," Simon began, "that so large a share of this discussion should come to be taken up by the lawyers in the House. On the other hand, it is unquestionably one of the matters on which litigation may arise and where in consequence those of us who earn our living by the law should offer our opinion on the subject." In his view a construction had been put on the new clause by Sir Edward Carson which, "with all respect to a much greater lawyer than myself, I decline to accept." Why should it be said that the Government were seeking to put the Trades Unions in such a position as no other body had ever been known to occupy?

"Is there any reason for such a suggestion? Can no one suggest other associations possessed of great funds, highly organised, and capable of considerable mischief, and yet whose funds cannot be touched? Let us take a simple and popular instance," he suggested with pleasant irony, "the Tariff Reform League, a body with great and somewhat mysterious funds, a body highly organised, and capable, as some think, of evil as well as good. It is possible that its funds might be used for mischievous purposes. But would anybody get up and say that, if Mr. Vince [its secretary] was to perpetrate a tort—say, publish a libel on the members of the Cobden Club—he would be jeopardising the funds of the Tariff Reform League and that they would be liable?"

At this an Opposition Member, presumably unaware that this was a maiden speech, and so by custom immune from interruption, cried, "Yes, certainly."

"I should like to see that action tried," Simon retorted. In his view, he went on, there had been a great deal of confusion in the discussion; there were many bodies in England with large funds at their disposal whom no lawyer would recommend any client to sue. For example, "If hon. Members want to sue a West-End club, they have to pick out the

secretary or some members of the committee; and the damages, if they get them, will come out of the pockets of those persons and not out of the funds of the club at all."

The Taff Vale judgment, he argued, had created a situation which had not been anticipated in 1871, when the Trades Unions were first recognised as lawful associations. "Lawyers who speak with such certainty now would have said, if they had been asked ten years ago, that no such action for damages could be brought" against a Trades Union. Indeed, no single action of the sort had been brought between 1871 and the date of the judgment, thirty years later. "What Parliament was believed to have accomplished was acted on for a generation without any of the mischief which it has now been suggested will arise." How, then, could it be seriously maintained that the new clause was establishing a novel and shocking state of affairs?

He came to his third point. There were, he suggested, good reasons for giving Trades Unions special consideration in such matters. "One need not be a lawyer to see that Trades Unions have very great difficulty in getting level justice in a court," because damages are assessed by juries or special juries which never consist of members of the working-class. And he added in conclusion that, "Since 1870 Trades Unions have conducted themselves with credit and ability, without violence and with that good sense which is in itself the best of all reasons why they should get the protection they now ask. It sometimes appears that lawyers are horrified that no action can be brought, but is there, even from the lawyer's point of view, anything so wonderful about it? Three eminent Lords Justices in the Court of Appeal once declared, in *Allen v. Flood*, that such an action could not be brought. In determining what the law should be for the future, we should not be debarred by a decision [the Taff Vale judgment] which has produced such unexpected consequences. We should legislate for the situation as we find it, and support the clause of the Attorney-General."

When Simon sat down it was recognised on every side that he had done well. His speech had contained no verbal fireworks—but only F. E. Smith has ever succeeded in im-

pressing the House by deliberate brilliance at his first attempt—yet Simon had not fallen into the error, so common among lawyers entering Parliament, of making to that impatient audience a speech more suited to the courts. He had steered instinctively between the Scylla of flashiness and the Charybdis of dullness, and there could be no doubt about the intellectual vigour and freshness of his contribution. He had the satisfaction of knowing that he had made an impression on the most critical tribunal in the country which placed him with Smith and Philip Snowden as the outstanding new Members of the House.

He was followed by Mr. Clavell Salter (now Mr. Justice Salter), who dismissed the reference to *Allen v. Flood*, “on which the hon. Member has rested his able speech,” as no better than a technicality. This was a debating point: it could not reasonably be argued that Simon’s speech was based on the reference in question. Mr. Salter then reiterated Carson’s complaint that the new clause was openly setting up a privileged class of people who, if proceeded against, could and would say, “I belong to a Trades Union and I am immune.” And so the debate continued until Lord Robert Cecil disingenuously complained that the Government had broken an implied pledge by continuing the debate after eleven o’clock, and Mr. Balfour led most of the Opposition out of the House, a manoeuvre which gave headlines to the newspapers next morning, but did not prevent Simon’s speech from receiving favourable comment.

He increased his reputation by his next speech, on the Third Reading of the Bill, on November 9.* On this occasion he followed Sir Frederick (later Lord) Banbury, one of the Members for the City of London. He began pleasantly by saying that two things seemed to emerge from the previous speaker’s remarks: “The first is that this Bill is in his opinion going to complete the destruction of British trade and, especially, to do irretrievable damage to the interests of the working-classes. And the second is that it is not quite certain whether he and his Party are going to vote against it.”

* This is the speech erroneously described as his maiden speech in *Comments and Criticisms*.

At this Sir Frederick rose to say that he was sure that Simon did not wish to misrepresent him. He himself was certainly going to vote against the Bill, but, not being the leader of the Unionist Party, he could not answer for his colleagues.

Simon replied smoothly that he was sorry if he had not fully understood this: time would clear up Sir Frederick's doubts about his Party's vote. A much more important matter, he said, which arose out of the speech they had just heard was how far the Opposition was justified in denouncing the situation which the Bill would create as one of grave injustice and inequality. "I submit that, whatever else is doubtful about the Bill, one thing is clear, and this is that it is an attempt—an honest and generous attempt, as I believe—to get back to a position which the public had always understood to be secured by law to Trades Unions."

He repeated the regret expressed in his maiden speech that lawyers should have taken so great a part in the debate, "but a man who is a lawyer and has applied his mind to the history of this matter cannot doubt that from the year 1871 down to the Taff Vale decision in 1901, a period of thirty years, although Trades Unions were constantly the object of criticism and attack, and although they were bodies which employers would have been very glad to assail, yet in no single case, in no single court, and on no single occasion did any lawyer ever advise an action against a Trades Union. When the hon. gentleman asks for proofs that this was the popular notion—and the legal notion—of the situation Trades Unions occupied, I invite him and I invite hon. and learned Members on the opposite side of the House, who know the care and precision with which the members of the legal profession give advice in the important matter of litigation, to explain why it is that for thirty years no action was ever brought against a Trades Union.

"The explanation is perfectly simple," he pointed out. "It is not, of course, that the Taff Vale decision has altered the law. Judges do not alter law; they only interpret it—but the interpretation put by the House of Lords [in the Taff Vale judgment] on the law is one which has changed the whole

state of affairs. This was not the only occasion on which great Courts and great Judges have produced great surprises by their interpretation of some of the legislative efforts of this House." And he referred, as an analogy, to a recent decision of the Court of Appeal on the interpretation of the Education Act of 1902.

"But there is a much more important question than what the opinion of lawyers is on this subject. What was the opinion of the country, what was the opinion of the public, on this question from 1871 onwards? What was the opinion on the strength of which the Trades Unions grew up? Beyond all dispute, this opinion was that the funds of Trades Unions were protected against claims for damages, and, this being so, the Bill is only restoring a position which the country at large has always thought the Trades Unions already occupied."

He tempered his flow of reason with a partisan thrust. It was odd, he observed, that the Tories, who were now seeking to deny this interpretation of the Trades Union position before the Taff Vale judgment, should so consistently in the past have claimed that they were responsible for the secure position which the Trades Unions enjoyed. He reminded the House that Mr. Joseph Chamberlain had asked his followers in Birmingham in 1900, a year before the Taff Vale judgment, "to consider for a moment to whom you, the working-classes of this country, owe all the legislation which has really made a difference in your condition." For what had Mr. Chamberlain, rightly or wrongly, claimed credit for his Party? "Surely it was the situation which was commonly understood to exist before the Taff Vale decision? If that is so, what is to be said of the extravagant denunciation which has been poured on this Bill" by the Opposition?

"The Party represented on the opposite benches was responsible for the legislation of this country for a large part of the last generation, and, if they were of opinion that the immunity of Trade Union funds was an outrage and an injustice, they had plenty of time in the past to rectify that injustice. I for one cannot understand how a body of men who claim that the position of Trade Unions—which means

the position as it was commonly understood—was due to their own efforts could consistently attack the present Bill,” which was merely designed to restore that understood position.

And Simon ended by summarising his arguments in the claim that “the Liberal Government is entitled to call on every Member desiring to see made good the belief held by the past generation as to the position of organised labour to help to pass into law a Bill that simply restores Trades Union funds to the position they were already thought to enjoy.”

Mr. D. J. Shackleton, the Labour Member for Clitheroe, followed with a speech which more or less repeated Simon’s arguments. After a few more speakers, Mr. Balfour rose to wind up for the Opposition. He said that they had heard two very interesting speeches that afternoon from Simon and Shackleton. “These two speeches really sum up the case for the Bill; and they employed arguments which, so far as they go, are not in my opinion susceptible of effective answer. I do not mean to say that on this account they are conclusive of the whole question, but the contentions advanced are, so far as I am aware, broadly speaking, true as far as they go.”* As a result, the Conservative leader went on, he had decided not to divide the House against the Bill! And even Sir Frederick Banbury did not carry out his threat to vote against it.

As a result of these two speeches, though they have sometimes eluded his memory, Simon was recognised as a new asset to the Liberal benches, balancing F. E. Smith’s value to the Opposition. In a way his success was even more remarkable than his rival’s. Smith was one of the very few Opposition candidates who had managed to secure election in the previous winter, whereas Simon was part of a huge conquering host. The former once told me that he could not have hoped for his rapid political advancement except for the accident of being returned at a time when his Party was few in numbers and low in spirits. The implied compliment to Simon, whose advance was even more rapid, is correspondingly great.

* A superb, and typical, Balfourian statement of opinion.

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He had a somewhat disconcerting experience in Parliament, however, a few months later. The Government, though committed to Irish Home Rule in principle, were determined not to introduce it until after another General Election. The Irish Members decided to keep the issue before the public by putting down a Home Rule motion for debate. Its wording suggested that a self-governed Ireland might be outside the framework of the British Empire. The Government, willing to show their theoretical sympathy with Home Rule, but unwilling to go as far as the motion implied, decided that one of their private Members had better introduce an amendment which would qualify it by ruling out the suggestion of a wholly independent Ireland. Sir Henry Campbell-Bannerman being mortally ill, the leadership of the House had fallen on Mr. Asquith, the Chancellor of the Exchequer, with Mr. Lloyd George as his principal lieutenant. The last-named sent for Simon, who, for all the brilliance of his two speeches, was still an almost untried man, and invited him to move the semi-official Liberal amendment.

It was a somewhat frightening commission, for it would expose him to the attacks of the Opposition and of the extremer Irish Nationalists alike, but he gladly accepted it. His nervousness was increased when "Tim" Healy, moving the Nationalist motion, began his speech with the cutting words, uttered in a loud screech, "Mister Shpaker, Sorr! Gladstone is dead; the Prime Minister is sorely stricken, and so we must put up wid the Chancellor of the Exchequer." Simon, shivering on his back bench, wondered gloomily what treatment *he* would receive when he came forward with his amendment. However, all went well.

CHAPTER FOUR

AT the beginning of 1908 Simon's rise at the Bar was so considerable that he felt justified in applying for silk and thus qualifying for the higher and more remunerative opportunities of his profession. It is always a risky proceeding; many a successful junior has utterly failed as a K.C. and has had cause to regret his promotion. F. E. Smith, Simon's friend and rival since Oxford, took silk at the same time, and, at thirty-five, the two became the youngest K.C.'s in the country, Simon having a seven-months advantage in age. Very few men had ever taken silk earlier. True, Isaac Butt did so at twenty-nine and Lord Rathmore at thirty, but they both practised in Ireland, where conditions were very different. Smith was promptly made a bencher of Gray's Inn, but Simon had to wait another two years before the Inner Temple called him to its high table.

On March 6 a dinner was given him by his constituents at the Great Eastern Hotel in London to celebrate the beginning of a new stage in his professional career. The Lord Advocate of Scotland, Mr. Thomas Shaw, K.C., M.P.—he was raised to the peerage as Lord Shaw of Dunfermline in the following year, and afterwards became Lord Craigmyle—took the chair, and, a compliment to all concerned, Sir Edward Carson, equally well known as a Unionist politician and as a foremost advocate at the Bar, was invited to propose the chief health of the evening. "A select company, numbering about 130 and representative of the Liberal and Unionist parties of the Walthamstow Division," were present, while the proudest and happiest man in the room was Simon's father, who had come up from Somerset for the occasion.

After the dinner had been eaten and the King's health had been proposed by the chairman "without one word but with full fervency of heart," to use Mr. Shaw's own phrase, Sir Edward Carson rose. I shall quote his speech at some length because, even making all due allowance for the courtesies of

the occasion, it shows the high reputation which Simon had already gained at the Bar and in the House of Commons.

"I must admit," Sir Edward began, "that some few weeks ago, when the afternoon post brought me a letter headed 'Walthamstow Liberal and Radical Association,' I really wondered what on earth could be the communication they were making to me. The only occasion I recollected as having been in the constituency was some twelve or thirteen years ago, when I was induced to go down and make a speech for the Conservative member, and I seriously thought for a moment, when I saw the heading on the notepaper, that I was being brought to task for something which I said then." When, however, he discovered the real purpose of the letter, he had at once accepted the invitation with the greatest possible pleasure. "I was assured in the letter that the meeting would be absolutely non-political. I am not quite sure that this made the slightest difference; if I had been told that it would be a Radical gathering at which I should be the one stray sheep, I really believe I should have accepted all the same—because I love the man more than I dislike his politics.

"I don't know if you fully understand the extent of my generosity," he added slyly, "because the honour conferred upon my friend will, in the long run, materially affect my own pocket. One result of Mr. Simon's being called within the Bar is that my own business will diminish. But, after all, he and I belong to a profession which is a generous profession, and I hope we have no petty jealousies. When we see a good man we appreciate him. I have posed in many capacities, but seldom as a prophet; still, I will tell you that, if Mr. Simon is spared health and length of life, he will go far in his profession. Indeed, there is no honour in the profession which he may not most worthily take." As for Simon's political future, "We have already, during the short time he has been a Member of the House of Commons, learned to respect him not merely for his great ability, but for his courage and honesty. I can say, speaking to many of those who are Mr. Simon's supporters and some who are his opponents in the division, that I think his constituents are happy and lucky in having so worthy a Member. I always find it

difficult to speak of a man's virtues in his presence, and, therefore, if I had my own way, I should prefer to speak of Mr. Simon's vices—but I have to tell you that I do not know what his vices are.”

After this pleasant beginning, Sir Edward recalled his introduction to the stainless Simon. “My first knowledge of him was when I had the honour of being His Majesty's Solicitor-General.” This was, of course, in the last Parliament. “I came across some notes in reference to some international case which had been made by Mr. Simon. I was much struck with these notes. He was then almost in his swaddling clothes, and I could not help asking who the Mr. Simon was who had made these notes. This may seem to *you* an ignorant question, but, at the time, it was not an unnatural one. Since then I had the good fortune to make his friendship and I got him to assist me in his earlier days in many troubles and difficulties.”

At this, for some inexplicable reason, the audience laughed heartily, and Sir Edward explained that “I mean, of course, legal troubles and difficulties.

“I knew nothing about Mr. Simon's politics then, and cared nothing, because what I wanted was a man who could make good notes, and I found one in him. I remember on one occasion, at the end of a long and arduous session in the House of Commons, in which my political friends and myself had been fighting, among other things, over the education of our children, I received a communication from the Canadian Government asking me to undertake an important international case with reference to the Alaska boundary. Such was the state of fatigue in which I was at the end of the session that I went home and cried like a child.” (Carson, by the way, did this more often than he was likely to admit; he was very highly strung.) “I appealed to Mr. Simon to help me,” he went on, “because I had little time in which to undertake a great and important matter. He, with that readiness which always characterises him and with that love of work which is the great feature of his success, at once consented, and all through that long and trying time I felt perfectly safe. I can assure you that I am really speaking

what I absolutely feel when I say that I could never have brought my part of that great trial to a satisfactory result but for the assistance I received from him.

"I remember Mr. Sefton, the Canadian Minister for the Interior, drawing me aside at one of the preliminary conferences and asking about Mr. Simon, 'Who is that young man who seems to know so much more about the case than anyone else?' I told the Minister that this was Mr. Simon, who was then taken into the case, and both the late Attorney-General [Sir Robert Finlay] and I must admit the great assistance he was."

And the speaker concluded: "All of us here to-night wish to convey our congratulations to Mr. Simon and our hope that he may have the increasing respect, love, affection, and admiration of all who come in contact with him. So keenly do I feel about this that I am almost tempted to wish, if it were not disloyal to my own Party, that Mr. Simon may long continue to be Member for Walthamstow. One thing I can say, however, and it is that, so long as his Party are represented in the House of Commons by a Member from Walthamstow, no more distinguished representative will be found for that division. I can give you with all sincerity and from the bottom of my heart the toast of our congratulations to Mr. Simon."

The toast was drunk and three cheers were given for Simon, who rose to reply.

"I am only using the language of sober truth," he told his hearers, "when I say that your great kindness and generosity overwhelm me. It was sufficiently overwhelming to be told that this evening's proceedings had been arranged behind my back and without my knowledge, and that the distinguished Conservative leader, Sir Edward Carson, had not only been asked, but had consented to come and make the far too kind speech he has just made. This was embarrassing, and I do not know whether it is more or less embarrassing that Sir Edward has said things which have apparently met with your approval.

"I think I know why Sir Edward was chosen. When you give a dinner of congratulation, you need a little blarney.

We know Sir Edward as a powerful advocate and a terrible cross-examiner, but I know him best as one who has always been far too kind to me. When you asked him to come, you did not know that there was any special relationship between us; and I confess that I am very proud that he has spoken to-night. As always happens, a generous friend forgot to mention his own generosity. Sir Edward Carson has referred to the fact that I was the envied among the most enviable of the junior Bar in having a great brief with a great fee marked upon it in a great arbitration for a great colony. It was he who got that brief for me. There is a strict rule in the profession to which he and I both belong, that there must be no touting, and I do not accuse him of breaking that good and salutary rule; but at the same time I strongly suspect that on another occasion than the present he exercised that priceless Irish quality of blarney.

"I am told that the proceedings to-night are in no way political. If they had been of a party character, I should have had difficulty in knowing what to say, for, when I observe that the chairman is a first-class fighting man, a Radical Lord Advocate, and that Sir Edward Carson is a first-class fighting man on the Conservative side, I feel that we should have had in this room a frightful catastrophe which would have been comparable only with the battle of Bannockburn and the battle of the Boyne rolled into one."

Thanking the company again for its tribute to him, Simon assured them that "Taking silk is a very simple process. You give up the practice you have got and begin again, and you run a very fair chance of incurring the perils of starvation. I know well why my political friends and political enemies have been so kind as to feed me this evening: they know that the time may not be far distant when I shall be glad of a square meal. For the rest, taking silk consists of making one's head very hot in an absurdly large and heavy wig, and one's legs very cold with absurdly thin and draughty silk stockings. We pass from court to court making bows, which may be farewells to the Judge for ever and for aye. Therefore, I feel grateful to my friends for the way they have

launched me out on my new career at an entertainment at which I have been well fed."

He assured the Walthamstow Unionists present, some of whom he tactfully named, that he did not misinterpret their assistance at the banquet. "If I may use a lawyer's phrase, it is 'without prejudice' to your doing your very best to defeat me at the first available opportunity and also without prejudice to my giving you as many hard knocks as I can. I am proud of this occasion as one on which we can show what I believe to be a characteristic English view of public life. Sir Edward Carson and I differ about everything which is ordinarily thought to be a matter for discussion, and yet we agree about some important things. I hope we all agree that the Bar is a great and honourable profession. I am quite sure that we all agree that far more important than coincidence of opinion is the determination to persevere honestly in the opinions we possess." Last week, for example, he had himself voted against the Government. "This will not be counted against me for evil by Sir Edward. I am sure that we hold the opinion which English men and women hold—namely, that it is possible to differ in opinion and still be honest in our view of the means by which the whole administration of the country is kept steady. I do not ask what my opponents may say, but on future occasions I may again have to vote against my Party. Whatever the future may be and whatever view I may take, I trust that you will continue to believe that it is done in perfect honesty, with sincere patriotism, and with the real belief that opinion is nothing compared with other things." And, yet again thanking them for their kindness to "one who two years ago was a mere stranger amongst you," he sat down.

One of the Walthamstow Unionists then proposed the toast of the Houses of Parliament, to which the chairman replied, pointing out cheerfully that it was all very well for Sir Edward Carson to have been patronising Simon, but perhaps one day Simon would be patronising Carson. It was quite certain, he hinted, that Simon's merit would soon receive official recognition from the Government.

After which there were more speeches, none of them per-

haps as important as their predecessors, more enthusiasm, and a number of songs by various professional artists; and Simon was duly launched on his effort to avoid starvation within the Bar.

In this he succeeded admirably. His first year as a silk showed only a slight setback in the total of his fees, and thereafter he went ahead rapidly.

§

One of his noteworthy cases as a young K.C. was the libel suit which Messrs. Cadbury, of Bournville, brought against a London newspaper, the *Standard*. He appeared with Rufus Isaacs and other distinguished advocates for the prosecution, while Sir Edward Carson led for the defence. The case was heard at the Birmingham Assizes. The newspaper had said, in effect, that the famous Cadbury cocoa firm had for some time been aware of a state of affairs bordering on slavery among the workers who produced their raw material in Portuguese West Africa, but had done nothing to remedy this. There was a political side to the allegation, because the Cadburys were well-known Liberals whose Party had come into power at the last General Election largely on the cry of "Chinese Slavery" in South Africa; the *Standard*, as a Tory newspaper, was not disposed to forget this. Also, of course, the Cadburys set out to be model employers and public reformers, and several members of the family had in the past played a large part in anti-slavery movements. When the case came on, the newspaper pleaded that what it had said was true.

The plaintiffs' counsel explained that Cadburys were pioneers in the establishment of garden-cities for their factories and had made special efforts to secure the health, education, and comfort of their employees.* In their business they used vast quantities of cocoa—about $2\frac{1}{2}$ per cent. of all that was produced in the world—which they bought through brokers in London and Liverpool, most of it coming

* It is amusing to reflect that these garden-cities, etc., were soon to be attacked by certain reformers as instruments for keeping their occupants in a state of "wage slavery."

from the islands of San Thomé and Príncipe, two Portuguese possessions in West Africa. They owned no plantations of their own, except a small one in Trinidad. After they had been buying this Portuguese cocoa for many years they learned that it was produced by a horrible form of forced labour; they at once tried to get reforms introduced, but, as they had no power on the islands except such influence as they could wield by the threat of refusing to buy the cocoa, nothing was done. They then approached the British Foreign Office to see if diplomatic action could be effective, and Sir Edward Grey, the Foreign Secretary, agreed with them that they had better continue to take supplies from the islands while he negotiated with the Portuguese Government, because, if his efforts failed, a threat to stop buying might be decisive. Together with Frys, Rowntrees, and other British firms, Cadburys sent out a commissioner to the islands to investigate conditions in order that his evidence could be put before the Portuguese Government. Mr. Cadbury, the head of the firm, himself visited Portugal several times to confer with interests there, and also inspected the islands. Shortly after his first journey to West Africa he announced his intention of visiting them again, whereupon an article appeared in the *Standard* of September 26, 1908.

"We congratulate Mr. Cadbury upon his journey, which does not come too soon," it said, and, suggesting that the firm should have investigated the labour system in the islands before, remarked that this system "in most of its essentials is that monstrous trade in human flesh and blood against which the Quaker and Radical ancestors of Mr. Cadbury thundered in the better days of England." In the course of the article it described the system with many side-glances at the vocabulary of the "Chinese slavery" agitators at the last election. The negro was dragged to the cocoa-plantations and

herded into compounds. Think of that, Mr. Cadbury—*compounds*! He works from sunrise to sunset, year in, year out. The children born to him are the property of his owner. He is beaten if he does not work hard

enough, and nearly whipped to death if he tries to escape. Portuguese law requires that he shall be *repatriated*—this is another term Mr. Cadbury should appreciate!—in five years, but he is never repatriated, for he either dies before the five years are out or is kept in servitude till his death. About one of these free and independent labourers in every five dies in the first year, and the worst of all this slavery and slave-driving and slave-dealing is brought about by the necessity of providing a sufficient number of hands to grow and pick cocoa on the islands of Principe and San Thomé, the islands which feed the mills and presses of Bournville! Such is the terrible indictment made, as we have said, by a writer [Mr. H. W. Nevinson] of high character and reputation, on the evidence of his own eyesight. There is only one thing more amazing than his statements, and that is the strange tranquillity with which they are received by those virtuous people in England whom they intimately concern.

The defendants having pleaded that the article was true, the prosecution claimed that what the jury had now to decide was, "Is it true to say that Cadburys did nothing when they realised the conditions on the islands? Is it true that they sat down to enjoy the profits of the cocoa business and wilfully closed their eyes to any agitations to improve conditions there?"

Counsel now went into details, expanding his opening statements. He stated, for example, that Cadburys liked the San Thomé and Principe cocoa because it had a more uniform grain than any other; they had first heard about forced labour on the islands in 1901 and promptly communicated with other cocoa firms and the Portuguese Government in the attempt to improve conditions. They spent £3,000 in sending out their commissioner, Mr. Burt, to "probe the matter to the bottom," and presented his report to the Portuguese Government through Sir Edward Grey; but it was received with much hostility by the Portuguese Press and the vested interests concerned. When Mr. Cadbury

visited Lisbon in 1907 he managed to make the planters promise to co-operate with the Portuguese Government in reforms, but political upsets in Portugal interrupted this process. The *Standard* was aware of this, because it had printed an article referring to the good work achieved "by the agitation carried on by the great Quaker firms for some years," yet, in the article now before the court, it alleged that this agitation had been mere eyewash, as if to say, "You've done a great deal, but you're a set of canting hypocrites. You pretend to do things, simply in order that you may one day point to what you've done." Counsel referred to the fact that the defence had put in sixty pages of print in justification of the libel, but most of these pages were reprints of political articles in the *Daily News* about "Chinese slavery"; it would appear that the *Standard* mistakenly supposed that the Cadbury Bros. who were the proprietors of the *Daily News* were the same people as the plaintiffs, but in fact the Mr. W. A. Cadbury who had been the chief agitator over the cocoa scandals had no connection at all with the *Daily News*, though Mr. George Cadbury, the head of the firm, was its part-proprietor with his two sons.

Mr. W. A. Cadbury then entered the witness-box. He told the court how a stranger in Trinidad had first informed him of conditions on the West African islands, whereupon he wrote to other Quakers who took an active part in the Anti-Slavery Society. He had tried to persuade his American competitors to join in an agitation, but was unsuccessful, though the other English firms co-operated; in his view, he had approached every possible ally and for a long time he had made the matter his chief concern. Believing that the trouble should be handled by international action rather than by private firms, he had approached the Foreign Office, and there he was told to keep quiet and to refrain from public protest while negotiations were going on. He admitted that it would be difficult, for the first year at any rate, to find other cocoa to replace the Portuguese supplies, but his firm was ready to face this difficulty. Simon, examining him on his second day in the box, brought his evidence to a close with this comprehensive question, "In your judgment, then

and now, were the steps which you took the best steps to take if you were going to have any influence at all?" The witness replied, "Yes. And, looking back over the past, I honestly cannot see any other steps which we could have taken."

He was then vigorously handled by Sir Edward Carson, the first ten minutes of whose cross-examination will never be forgotten, for blistering effectiveness, by anybody who heard it. Carson had no case, but he set himself to make Mr. Cadbury, a rather pompous and self-righteous though completely honest old gentleman, admit that he *knew* most of the horrors mentioned in the article to be true. "The wretched cr'atures were whipped if they tried to escape. *Ye knew that?*" "Yes, but——" "Never mind the buts. They never did escape. *Ye knew that?*" And so on, until even a Birmingham jury began to regard Mr. Cadbury with distaste. It was all very unfair, and Carson failed completely (as he knew he must fail) to show that the plaintiff had either profited or sought to profit by the waiting tactics enjoined on him by the Foreign Office.

In sum, Mr. Cadbury stated that his was a family concern, and had a capital of two million pounds in 1903; that he and other directors of the firm had subscribed to the Aborigines Society for some time past; that the slavery on the islands was of an atrocious character, and that some of the negroes were subjected to a forced march of a thousand miles and shackled at night on their way to the plantations. But he added that all slavery was atrocious and he was not prepared to distinguish between one type and another. He denied, however, as did all the other witnesses for the prosecution, that the cocoa was cheaper because of the abominable conditions under which it was produced. Incidentally, though Cadburys had at last ceased to buy any more of it since the beginning of the year, not a single slave had been benefited; the cocoa was sold to America and Germany instead of to England.

Carson, who did not call witnesses, argued that the *Standard* was a newspaper of high reputation which believed its duty to lie in calling attention to this slavery. It had spoken

the truth, he said, and did not intend to haul down its colours. He referred to the Cadburys as people who had put themselves forward as champions of morality and good labour conditions and who subscribed to societies for suppressing slavery . . . but they had paid £1,300,000 for slave-grown cocoa! They should, Carson suggested, have refused to buy anything from those islands as soon as they heard of the conditions prevailing there; but instead they had gone on buying, with the explanation that it was in the ultimate interests of the slaves that they should do so, because some day they could refuse to buy any more unless conditions were improved. "Was it necessary to keep that lever in position for eight years?" he asked scornfully. As for the argument that, if Cadburys had not bought the cocoa, somebody else would do so, Carson remarked that this sort of plea would relieve everybody from the duty of doing the right thing.

Criticising the Cadburys' efforts to keep the matter from public knowledge, Carson attributed this to their fear that the public would have stopped buying their wares if it were known how the raw material for these was produced. The plaintiffs had stated that the Foreign Office had asked for secrecy while negotiations proceeded with the Portuguese Government and in order that the Portuguese might be given a chance to remedy the situation; but such "tenderness" about publicity, he said, was truly remarkable. Carson asked the jury, therefore, to say that the ventilation of the whole matter was of the greatest importance to the public and that the defendant newspaper was justified in making fair comment on it.

Counsel for the plaintiffs jumped up to point out that Carson was not entitled to claim that the article was a matter of "fair comment," because the *Standard* had pleaded that the statements were true and it must stick to this defence without introducing others. The Judge, Mr. Justice Pickford, upheld this objection.

The Judge summed up heavily for Cadburys. He told the jury that the plaintiffs must win unless the defendant newspaper had proved that they had dishonestly pretended to make efforts to stop the slavery, but had really wished these

efforts to fail, in order that they might continue to make profits from the slave-grown cocoa. He agreed that no question was involved about "fair comment," or about slavery, or whether the firm's conduct was consistent with the *Daily News* attitude towards Chinese labour in South Africa, or, above all, about the political differences between that newspaper and the *Standard*: nor had the jury to consider whether or not Cadburys had taken all possible steps to end slavery on the islands. The article in the *Standard* meant that they were hypocrites who made empty professions of philanthropy, interesting themselves in Chinese labour in South Africa, where they had no interests at stake, but accepting negro slavery in West Africa because their pockets were concerned. Both plaintiffs and defendants, the Judge pointed out, agreed that this was the meaning of the article, and so the only question for the jury to decide was, "Has the *Standard* proved its words to be true?" He referred to the evidence which disproved the allegation that the West African cocoa was cheaper to buy because of the manner in which it was produced; this evidence, he declared, made it impossible for the *Standard* to affirm that Cadburys had a financial motive in continuing to buy it. He added that they had said they would have stopped buying it earlier if such a step would have done any good. Everybody with whom they had negotiated seemed to treat them as acting in good faith; the jury might disregard such opinions, but they must have good reasons for so doing. The Judge's last word was that, if the defendants had not proved their case, they must be considered to have aggravated it by persisting up to the last in saying that it was true—which was a clear hint that heavy damages should be awarded.

The jury, after being absent for nearly an hour, returned a verdict for Cadburys, but awarded them only a farthing damages. Carson promptly asked that no costs should be given against the newspaper, but the Judge drew the line at this.

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In the same year, 1909, Mr. Lloyd George brought in his famous Budget which the House of Lords refused to pass. The Government went to the country, and Simon in January, 1910, found himself opposed at Walthamstow, which now had an electorate of over 39,000, by a Conservative solicitor, Mr. Stanley Johnson. His speeches were largely devoted to the wickedness of the Lords, both in and out of Parliament. He referred to the allegedly abominable conduct of the Duke of Sutherland (the father of the present Duke), who not only presided over the Tariff Reform League, but in a recent Christmas message to his servants and pensioners had unseasonably warned them that, if the Budget were passed, he might have to reduce his bounty to them. My researches show that in more than one speech Simon denounced the rich for "going to Monte Carlo," as if this were something peculiarly obnoxious to the Liberal voters of Walthamstow; perhaps it was, and in those days Simon had not yet discovered for himself the charms of the Riviera.

Otherwise there do not seem to have been many incidents worth recording, though his opponent (to Simon's outspoken annoyance, be it said) had meeting after meeting broken up by rowdies. I find, however, that, rising to speak in the Maynard Road schools, Simon was greeted by a woman in the audience with a cry of "On the table!" and obligingly mounted it in order that she might see as well as hear him; and that, being asked if he were in favour of Home Rule for Ireland, he replied, "Certainly," and did not repeat his pledge of the previous contest to offer himself for re-election if the Liberal Party decided to bring in a Home Rule Bill. Perhaps the number of Unionist Free Traders in Walthamstow had been over-estimated.

At another meeting he was asked a question which had evidently been prepared beforehand by the dastardly Tories: "Why are you a Free Trader, Mr. Simon, when your profession is the most protected in the country?" To this he replied comfortably, "I admit it is greatly protected, and it could be made still more protected by placing a tariff on all

barristers whose names do not begin with the letter S. But what is the result of its being protected? You have to pay more for it when you want to buy it. It has the same result as a tariff would have on food." Mr. John Burns, the working-man President of the Board of Trade, came down to speak for him and delighted an audience by stating that "A tax on food means shallower mangers for the horses, smaller larders for the children, and"—to an interrupter—"smaller nose-bags for donkeys, sir."

It would appear that the old tariff controversy was regarded as, on the whole, a better battlefield than the merits of the Budget and the naughtiness of the peers, for we find that Simon's slogan on polling-day was:

VOTE FOR SIMON

AND

NO FOOD TAXES

He was duly returned with 17,726 votes to Mr. Johnson's 15,531, a majority of 2,195. His majority had dropped by half from the election of 1906, but then nearly every other Liberal vote in the country showed a heavy decrease. Anyhow, he had held Walthamstow true to Liberalism.

CHAPTER FIVE

I DO not propose to recapitulate here the exciting political conflicts of the last years before the War which I have already sketched from the Conservative, Liberal, and Labour points of view in my biographies of the late Lord Birkenhead, Mr. Winston Churchill, and Philip Snowden respectively. I shall therefore pass to 1910, when Simon was invited by Mr. Asquith, the Prime Minister, to enter the Ministry as Solicitor-General. Such high office at the age of thirty-seven was unprecedented in modern times, although in the past Lord Hardwicke had attained it in 1720 at twenty-nine, Lord Mansfield in 1742 at thirty-seven, and Lord Eldon in 1768 at the same age. Simon's promotion was perhaps more surprising to the public than to his fellow-Members of the House of Commons, where his merit was acknowledged equally by his political friends and their opponents. Indeed, one reason why he was so successful there in debate was because of the interest which he roused in the Opposition leader, Mr. Balfour. The latter, as many of his followers deplored, was no keen party man; politics, especially in the House, interested him far more as an intellectual exercise than as a trial of strength. The give-and-take of debate was his delight, and a clever speech by a man on the opposite benches pleased him as much as a blunt speech by one of his followers bored him. From the beginning he was attracted towards Simon; we have seen the compliment he paid the young Liberal after the latter's second speech in the House on the Trades Union question. Moreover, Simon had found a way of interesting him. Whenever he was put up to reply to one of Balfour's speeches, he was careful to recapitulate the older man's argument. "I can best answer the right hon. gentleman's argument by summarising it," he would begin; then, after he had set out Balfour's main theme, he would add, if possible, "But the right hon. gentleman made this proviso," and would set out the precise qualification which Balfour's keen

mind had introduced into his main argument. Balfour, lolling back on the Front Opposition Bench, would nod approval, delighted that Simon had followed and recalled the point in question.

In private, too, Balfour was especially genial to the young man, though after Simon had taken silk there was a falling-off in this respect. Finding himself next to the Tory leader at a dinner one evening, Simon decided to ask the reason.

"You were always so kind and encouraging to me, Mr. Balfour, when I was a new Member of the House," he said, "that I hope you'll excuse my saying that I seem lately to have detected a certain coolness."

"In what way?" Balfour asked.

"Well, for one thing, you used always to refer to me as 'my hon. friend,' but nowadays you merely call me 'the hon. and learned Member.'"

Balfour, whose distaste for the Bar was notorious, replied with a smile, "Ah, I didn't know at first that you were a lawyer!" But, after this, the old cordiality returned.

When Balfour gave up his leadership in 1911, Simon sent him this letter from the Solicitor-General's office:

November 11, 1911.

DEAR MR. BALFOUR,

You must be overwhelmed at this moment with letters from political friends and supporters; will you let a Parliamentary opponent express his personal sorrow at your withdrawal from Conservative leadership? I owe much to your kind treatment of me in debate ever since I first spoke in 1906; and for your generous encouragement of a junior (and, moreover, of a poor creature who is condemned by a hard fate to be a lawyer!) I am truly grateful. It is a great satisfaction to many on our side that, though you are giving up leadership, we may still hope to see you in the House of Commons.

Believe me,

Yours most truly,

JOHN SIMON.

The other replied:

4, CARLTON GARDENS,
PALL MALL, S.W.,
November 15, 1911.

MY DEAR SIR JOHN,

Your kind letter has given me very great pleasure. You have, if I mistake not, a brilliant future before you; and you are one of those to whom I look as possessing both the wish and the capacity to maintain the traditional level of English political controversy.

With very many thanks,

Pray believe me,

Yours sincerely,

ARTHUR JAMES BALFOUR.

Many Government supporters assumed that Mr. Asquith, in promoting Simon, was not unmoved by the prospect of opposing another rising star to the notorious ambitions of Mr. Lloyd George. Simon had long been regarded as one of the most cogent speakers on the Government side, not only to beat off Opposition attacks—he could stand up to Carson and F. E. Smith on their own ground—but also, what was very important in that curiously constituted House, to persuade rebels on his own side to reconsider their occasional threats to vote against their Party. It was also a piece of good fortune for him that so many Liberal lawyer-politicians with senior qualifications for office had moved “off the cab-rank” since the 1906 General Election. Thus, Fletcher Moulton had gone to the Lords; so had Sir W. S. Robson; Mr. Haldane was appointed Secretary for War; Sir John Lawson Walton fell ill and died; Sir Samuel Evans was made President of the Divorce Court. Yet Simon did not at first wish to become a Law Officer. The work did not greatly appeal to him—he would have preferred to be a political Minister rather than a legal one—and, an interesting survival in him of old-fashioned Radical ideas, he was reluctant to take the knighthood which traditionally accompanies such promotion.

Though Asquith understood and sympathised with this hesitation, he over-persuaded Simon, who was knighted on October 26. Since his new post was an office of

profit under the Crown, it necessitated in those days his resignation and re-election to Parliament. Many of his supporters in Walthamstow hoped that the local Tories would not force another contest so soon after the General Election; these, however, had other ideas and again nominated Mr. Johnson. There was no doubt that the Government had lately lost much of its popularity, and the Opposition hoped that Walthamstow might be brought to reject Simon and, by so vigorous a demonstration of opinion, convince the Prime Minister of the propriety of diminishing his assault on the House of Lords and his efforts for Irish Home Rule. Heavy oratorical guns were brought down by both sides and, a new feature, a body of suffragettes arrived to abuse Simon, who, though personally in favour of giving women the vote, was attacked as a member of a Government which refused to introduce such a measure. His views on women's suffrage were succinctly set out in part of a speech which he made at a meeting at the London Opera House a little later, on December 4, 1912, when he said:

I think that we, meeting in this great building to make our plans for serving the cause of Women's Suffrage, are not likely to suffer from reproach because to-day we do not offer extended argument in defence of our general view. Why, sir, I have the training of the law courts, and I always suspect my own case when I think there is no argument against it, but I have met people, otherwise very sane and measured in their judgment, who share our view about Women's Suffrage, and who honestly confess that they cannot discover what is the argument against it. We are told by our opponents that there are more women in the world than men. All the more shame, sir, that the greater part of the adult community should not have the smallest share in choosing representatives of the whole community. (Applause.) We are told by our opponents that all the women will vote on one side, and all the men on the other! People who use such language must surely be ignorant of men and of women if they imagine that it is the nature of man never to agree

with a woman, and the nature of women never to quarrel amongst themselves. (Applause.) They tell us that, after all, and in the last resort, it is force that rules the world. It is not true. Why, sir, if force ruled the world, then the Prime Minister ought to be the professional strong man. It is not force that rules the world, either in the last resort or at all. True it is that for purposes of discipline you have soldiers and police, but the thing that is behind that body is not force. It is social co-operation. It is the common conscience. It is the hearts and the heads of millions of men, and women, too, who are combined in forming that overwhelming influence known as public opinion. We are told we cannot pursue what otherwise might be a reasonable programme because of these militant outrages. We repudiate and we condemn the militant outrages. But when all is said and done, what do they show? They show this: that folly is not the exclusive prerogative of the male sex, and that women can sometimes be unreasonable as well as men. We are told we are endangering the chivalrous sentiment which hitherto has inspired the action of men to their mates. Well, sir, fine as that feeling is, I wish that I could feel sure that it was true to say that the male population of this country can always be trusted to show chivalry and sentiment towards the unrepresented, the weaker half of the community. And, more than that, they tell us that if we pursue this policy we are going to unsex woman and turn her into a man without a man's strength. The answer is an answer which any man who has ever had the good fortune to know a woman well knows without it being stated. . . . It is not true that to accept the co-operation of the womenkind of our race is going either to modify the generous forces of masculine activity or to sully or besmirch the gentleness of womenkind.

Otherwise the election took its usual course. Simon spoke hopefully of House of Lords Reform and Irish Home Rule, and disparagingly of Tariff Reform and other Conservative proposals. Describing himself as "an old Walthamstow man

now," he modestly told his constituents that "A Solicitor-General is a kind of office boy for the Government. When there are late sittings at the House of Commons and Ministers get sleepy, they always say, 'Fetch the Solicitor-General.' When they can't understand something, they send for the Solicitor-General. My business will be that of second kitchen-maid, to carry things for the first kitchen-maid. It's a job in which I am liable to be dismissed at a moment's notice and without wages."

When polling-day came there was an influx of pickpockets into Walthamstow—never before had the police received so many complaints of stolen watches and wallets, and it would be impolite to ascribe this to local talent—and of motor-cars, "this up-to-date method of locomotion," as the local paper called them. It was estimated that among two hundred and twenty vehicles which sported Simon's colours there were no fewer than one hundred and fifty cars, in which thousands of voters and their families were thrilled by their first adventurous ride. Mr. Johnson had far fewer motor-cars, though he enjoyed the partial satisfaction of discovering that one of Simon's, through an error on the part of its chauffeur, had reported at the wrong committee-rooms and for some time been used to carry Conservative voters to the polls. The result of the voting gave Simon a majority of 2,766 votes over his opponent: 16,673 against 13,907. He had dropped a thousand votes, but Mr. Johnson had lost six hundred more.

The news of his victory was at once sent into the room where the "Constitutional Conference" on the House of Lords was conducting its secret meetings. The figures proved that the Government had not (as the Tories maintained) lost the confidence of the country, and from this moment the Liberal representatives refused further concessions to their opponents. "You're the man who broke up the Conference," the Master of Elibank, the Liberal Whip, called cheerily to Simon when next they met.

Scarcely had his return to the House been cheered by the Government benches and scarcely had he entered on his new duties than once again, for the third time in a single year, 1910, he was called upon to fight an election at Waltham-



From the "Westminster Gazette," November 5th, 1910

Mr. Balfour: "Not a very pleasant wind, but never mind, I don't particularly want to fly just now!"

[An "F C G" cartoon celebrating Simon's bye-election victory at Walthamstow in November, 1910]

stow. The Government resigned to canvass the country on the new Parliament Bill, which was once and for all to remove the House of Lords veto in financial matters. His opponent now was Commander Carlyon Bellairs, who had retired from the Navy in 1902, and, after being elected Liberal M.P. for King's Lynn in 1906, had then represented it as a Unionist in 1909.

Despite Simon's two recent victories, the growing revulsion of feeling against the Government was such that there was still no certainty that Walthamstow might not reverse its verdict of the previous months. The prospect of a close fight so worked upon some of his supporters that they broke up all Mr. Bellairs's meetings, and disregarded Simon's public protests against this form of hooliganism as a weak and sentimental surrender to outworn scruples. His own meetings, on the other hand, were uneventful, except on one occasion when a well-prepared heckler fired off a series of questions and at last, exasperated by the candidate's careful replies, shouted that he demanded a plain answer, Yes or No, to his enquiries. Simon refused to oblige him. "Suppose you were to ask me, 'Are you as big a fool as you look?'" he objected.

As he left this meeting to walk to the station on his way home, a policeman officiously volunteered to fetch him a cab. "No, no," Simon replied in his blandest electioneering manner. "I am perfectly safe among my old friends and my new friends in this constituency." A crowd of cheering supporters surrounded him as if to confirm this claim, among them two brawny men who seized him by the elbows in the fervour of their enthusiasm, deafening him with bellows of "Good old Simon!" When he extricated himself, he discovered that his watch had been stolen.

The Tory attack on the seat failed. With 16,998 votes against Commander Bellairs's 13,275, Simon raised his majority to 3,723, a thousand more than in the previous month.

A meeting was held at the Walthamstow Baths a week before Christmas to celebrate this victory, and he was presented with a cheque for £4,000, which, the chairman explained, was meant to recoup him for the expenses of one at

least of the three elections he had been forced to fight that year. Gratefully accepting the gift, Simon declared that he had not the slightest idea who was responsible for it, nor did he accept the facetious suggestion of somebody in the audience that the donor was Santa Claus. And, though he had tried to conceal the loss of his watch, his supporters presented him with a new one, which he carries to this day.

§

As Solicitor-General he was called on almost at once to take part in a prosecution of an unusual and, indeed, unparalleled character. On February 1, 1911, Edward Mylius was charged before Lord Alverstone, the Lord Chief Justice, and a special jury with having published a libel on the new King, George V.

At the beginning of the case, even before the jury were sworn, Mylius, a short dark young man, made a strange request. "I wish to ask," he said, "if the King is present." The Judge was so startled that he asked the prisoner to repeat his question, and the latter elaborated it by saying, "I wish to ask if the prosecutor is present here, and I demand his presence on the grounds, first, that every accused person has a right to be confronted with his accuser in court; secondly, that no action for libel is usually taken without the prosecutor being in court where the jury can see him; and, thirdly, that there is no proof that the prosecutor is at present alive." It may be revealed that, though Mylius was not represented by counsel during the trial, he had not framed these questions without legal assistance.

As it happened, he had already made an unsuccessful application for a subpoena to be issued on the King to attend the trial and give evidence for the defence, so that Lord Alverstone was able to reply, "You are perfectly well aware that the King cannot be summoned here. The King is not present." When Mylius was then asked if he objected to any of the names of the jurymen, he said, "I wish to ask each jurymen whether he is able to render a fair and impartial verdict on the evidence." The Judge refused to let such a question be put, and the trial began.

The prosecution stated that the first count of the charge accused him of publishing a libel on November 29, 1910, and again on December 19. Mylius had admitted posting the libel at the Notting Hill Post Office, but pleaded that it was true and that its publication was in the public interest. It was then revealed that the libel was contained in a republican leaflet printed in Paris and called the *Liberator*, with the sub-heading "An International Journal devoted to the extension of the Republic"; an article headed "Sanctified Bigamy" stated that the King had contracted a marriage at Malta in 1890 with a daughter of Admiral Sir Michael Culme-Seymour, had had children by her, and had "foully abandoned" her and them in order to contract "a sham and shameful marriage" with the present Queen in July, 1893. The article was read to the jury, and it was pointed out that Mylius's position was not that of an irresponsible and ignorant news vendor, for he was the person responsible for the publication and distribution of the sheet in England, and was in constant communication with Edward Holden James, its American editor in Paris. It was also explained that Mylius might have been prosecuted for seditious libel, but, as this would have precluded him from setting up the defence that the contents of the article were true, the Law Officers had deliberately framed a charge which would give him the opportunity of claiming that his statements were true, and give the jury an opportunity of testing this claim.

After very careful research the prosecution had reached the conclusion that the King did not possess the privilege open to other persons of going into the witness-box and refuting a libellous statement on oath, however much he might wish to do so. All Simon's researches were unable to produce any case in which the King had been allowed to go into the box; despite this, however, he was satisfied that there was ample evidence available to refute the allegation. First, Prince George (as the King then was) had not visited Malta in 1890 at all; he was not there from 1888 until some years after his marriage to the Queen. Secondly, Admiral Seymour was not given command of the Mediterranean Fleet until the middle of 1893, and he went out to Malta only on the very day of

the King's wedding, July 6, 1893. Thirdly, neither of his daughters ever saw Malta before November of that year. Fourthly, the marriage registers for Malta would be produced to show that not only was the King's name absent, but also that nobody named Seymour had been married on the island at the time in question. And, fifthly, the log-books of the ships in which Prince George served would show that his ship did not visit Malta in 1890. Moreover, letters had been found from James to Mylius containing such phrases as "In writing the bigamy article I decided to publish the fact at once without waiting for further verification. The best and quickest way to get at the truth is to begin to agitate the matter. If you have not stated the facts correctly, we will hear what the other side has to say." It was originally suggested in these letters that the King had married a General's daughter; the Admiral's daughter was an afterthought. These extracts showed that Mylius was well aware that he had no justification for his statements. The aim of the prosecution, it was stated, was not to protect the King as a monarch—there was no political bias in the charge—but to protect him as "a man, a husband, and a father."

Simon then examined Admiral Seymour about his daughters, the elder of whom was born in 1871 and was now Mrs. Napier, while the other, two years younger, had died in Malta in 1895. Neither girl, he told Simon, went to Malta till November, 1893; the younger one had never spoken to the King in her life, but the other had met him on the *Britannia* when she was eight, and had seen, but not spoken to, him at a reception in England in February, 1893. Mrs. Napier confirmed this, and, though Mylius was invited to cross-examine her and her father, he refrained.

After all the prosecution witnesses had been called, the Judge asked Mylius if he wished to call any evidence. He said that he did, but that he first wished to address the court with reference to the prosecution's methods; he thereupon read, in a very indistinct voice, some passages out of a standard textbook on libel. His main contention was that the Crown had employed procedure applicable to "enormous misdemeanours" of a political nature, whereas the pretence

had been made that the offence was to be treated as a personal one only; he alleged that, if the offence was really a personal one, the only possible procedure involved a personal affidavit by the prosecutor that the charges against him were not true, and that, as such affidavits had not been produced, the guarantees normally given to an accused person had been swept away. Then in a loud voice he cried, "I ask to call upon my first witness—that is, the King—to enter the witness-box. Yet I have been informed already by your Lordship that the court has not the power to issue a subpoena to the King." Since the King had made no sworn denial of the alleged libel and would not enter the witness-box to deny it, "I submit that the court has absolutely no jurisdiction whatever to proceed any further with my case or to send me to prison. I move on these grounds that the action be dismissed."

"Proceed," said the Judge sternly. "I rule against you. This information cannot be dismissed." And, when he refused, Lord Alverstone reminded him that he had expressed a wish to call evidence. Mylius protested again that he wished the King to give evidence in person or by affidavit and said, "I rest my case. I have been denied the constitutional right of a fair trial."

In summing up the Lord Chief Justice pointed out that up to the time when Mylius addressed the court he had contended that his statements about the King were true and that he could prove them; but, as the jury had observed, he had neither questioned the witnesses nor made any attempt to produce "a vestige, a scrap, or a shadow" of evidence in support of his allegations. He had claimed the right to put the King into the witness-box, but no such right existed; nor in any circumstances did the law permit a man to state an untruth and then demand that the offended person should be made to give evidence in the hope that it might support the original untruth. Without leaving the court the jury found Mylius guilty, and the Judge then sentenced him to twelve months' imprisonment, remarking that it was unnecessary to pass a heavier sentence. After this a document was read in which the King stated categorically that he had

never been married except to the Queen, and had never gone through any form of marriage except with her; further, he said that he would have attended the trial to give evidence to this effect had not the Law Officers advised him that such an act would be unconstitutional.

Later in the same year, 1911, Simon appeared for the Crown in a curious Inland Revenue case. Owing to the dispute between the Liberal Government and the Tory majority in the Lords, Budget resolutions had been passed in the Commons, but no further steps had been taken; as a result, no Act of Parliament existed to impose income-tax or super-tax for the current year, and the effect of the previous year's Budget had automatically expired on April 5. Mr. Thomas Gibson Bowles, who had begun life in the Inland Revenue Department and afterwards had become a financial publicist and, as a Free Trader, alternately a Unionist and a Liberal M.P., claimed that a notice sent to him by the Inland Revenue Commissioners, and headed "Super-Tax, Return for Assessment, Year ending April, 1912," was null and void, and that he was under no obligation to comply with the requirements of the notice. He asked also for an injunction to restrain the authorities from instituting any proceedings against him for not filling up the return, and that they should be stopped from sending him any more circulars of this kind.

Mr. Bowles did not dispute that returns had to be made as regards ordinary income-tax, but he submitted that super-tax returns were not on the same footing. Simon discussed the history of income-tax and pointed out that it was originally intended to be only temporary, and that therefore the Acts regulating its collection were always drawn up to expire automatically at the end of the financial year. Since, however, Parliament hardly ever succeeded in passing its new Finance Act by that date, and since, in consequence, there might be inconvenience and delay in collecting returns, a general provision had been made since 1890 that the provisions in force in the previous year's Act were automatically extended to all income-tax which might be imposed in the coming year. The actual phrase used was "the duties of

income-tax," and the point at issue was whether super-tax was a "duty of income-tax" or, as Mr. Bowles claimed, something different. Simon pointed out that when super-tax was imposed for the first time in the 1910 Finance Act, it came under Part Four of that Act, which was headed "Income-Tax," and he further submitted that it was spoken of there, as elsewhere, as an "additional duty of income-tax." Whereas Mr. Bowles wished "to treat it as a new animal in the fiscal menagerie."

Simon's contentions were accepted by the court, which held that super-tax was on the same footing as income-tax, and that returns for it could be demanded even though the Budget had not been passed into law.

In the following year the resilient Mr. Bowles brought a second action on similar but even more unusual lines. The House of Commons Committee for Ways and Means had passed a resolution on April 2, 1912, approving of the imposition of income-tax at 1s. 2d. in the pound, which resolution was adopted by the House in June; Mr. Bowles had some Government stock on the books of the Bank of England, who, in July, paid him the dividend due on it, less a sum which they deducted for income-tax at the rate aforesaid. He now claimed that the Bank had no right to do this before the resolution had passed through all its stages in Parliament and received the Royal Assent.

He presented his case in person. Against him two future Judges in Mr. Romer, K.C., and Mr. Rowlatt appeared for the Bank of England, while Simon and Rufus Isaacs, as Law Officers, attended the later stages of the case to assist the court. The mere fact of a layman confronting such experts would in any case have created considerable interest, but the impressive, erudite, and ultimately successful argument which Mr. Bowles presented made the case one of historical importance. He argued that Magna Carta was still law and that it provided that "no scutage or aid shall be imposed in our kingdom unless by the Common Council of our kingdom, except to redeem our person or to make our eldest son a knight or once to marry our eldest daughter"; therefore no taxation could be levied without an Act of Parliament, a

proposition (Mr. Bowles recalled) which was last challenged with regrettable consequences in the Ship Money case of 1637. A mere resolution of the House of Commons, he pointed out, is not an Act of Parliament. The Commons could and might alter their resolution, and not until the Third Reading is the matter disposed of even by the Commons, after which it has to pass through the Lords and to receive the Royal Assent; only then does it become an Act of Parliament. Mr. Bowles concluded that the principle for which he was contending—no taxation without consent—was as old as history; it had been affirmed by King Alfred and even by William the Conqueror, and he challenged the Law Officers to put forward any authority for suggesting that taxation could be levied without an Act of Parliament.

The other side had to admit these general propositions. They argued, however, that the Royal Assent eventually and necessarily followed the Commons resolutions, that these must therefore have great effect, and that, provided the Act was passed at last in the sense of the resolutions, these were meanwhile effective to authorise the tax to be collected. They repeated many of the arguments put forward in the previous case and insisted that the powers automatically extended into the coming financial year included the power to assess and levy income-tax. This time Simon and his colleagues did not convince the court, which held that a resolution of the House of Commons was insufficient to authorise the Crown to levy income-tax. It was agreed that the procedure referred to by Simon kept alive the machinery of tax collection so that preliminary work could be carried out by the officials, but it did not authorise either the assessment or the collection of taxes not yet imposed. In short, it was held that Mr. Bowles was right and the Bank of England wrong.

Who to-day would grumble at the deduction of income-tax at 1s. 2d. in the pound, even though Magna Carta were aggrieved?

§

Apart from constitutional struggles, 1911 is famous also for the introduction of those schemes of compulsory insurance

which, after long and bitter opposition from various quarters (not least from Mr. Belloc and others of like mind who protested that the separation of the people into two classes, the compulsorily insurable and the rest, was a step towards the creation of a servile State), have been gradually expanded into an overwhelmingly important branch of national economy.

The original National Insurance Bill was divided into two parts. Part One, dealing with health insurance, which was the province of the Treasury, was sponsored by Mr. Lloyd George, the Chancellor of the Exchequer; while Part Two, dealing with unemployment insurance, was the charge of the Board of Trade and Mr. Sydney (later Lord) Buxton, its President. Each of these gentlemen was given another Minister to help bring the respective plans into operation; Rufus Isaacs aided Lloyd George, and Simon assisted Buxton. As the great administrative qualities of the last-named did not shine equally in debate, more than a fair share of the work fell on Simon's shoulders, and he had to work out the scheme in conjunction with Mr. (now Sir) William Beveridge and other very competent officers of the Board of Trade and to speak on it almost incessantly in the House and in the country.

Though only five groups of workers were included in the original unemployment scheme—builders, men engaged on construction works, engineers, shipbuilders, and, lastly, a miscellaneous collection of coachbuilders, coachpainters, wheelwrights, motor-body builders, and allied trades—there were also supplementary grants for voluntary insurance in all trades. The whole scheme was meticulously prepared before it was put before the public; no other piece of social legislation was ever so well thought out or so well put through. I propose to quote only one passage from Simon's many statements on the subject, the peroration of a speech he made at Walthamstow on October 28, 1911:

The plan of the Bill is not some hasty experiment. It is a *matured* plan based on Trades Union experience and working. It is a *safe* plan, for the risk has been strictly

measured, and the finance of the scheme is soundly based. It is the *only* plan, for no reasonable alternative has through all these months of discussion been propounded. It is an *urgent* plan, for, unless we adopt it now and start the scheme in this time of good trade, the opportunity may go and we find ourselves in the midst of a period of trade depression without the help of the very instrument which now lies ready to our hands.

The truth of these words has been established beyond all controversy: whatever else may be said about the compulsory insurance schemes, as a whole or in details, it would be impossible to picture the present economic structure of this country without them. And the whole huge edifice of insurance legislation which to-day represents the chief activity of the Ministry of Labour has been raised on the foundations laid well and truly in 1911 by Mr. Lloyd George, Simon, and their collaborators.

Simon's rapidly growing income—his fees as Solicitor-General came to a huge sum,* and he had made a great deal of money in the few years before his appointment—made it possible for him to purchase in 1911 a beautiful property in Oxfordshire. Fritwell Manor, a few miles from Bicester, is a late Elizabethan mansion and a fine specimen of its class. The property had had among its owners Bishop Odo of Bayeux, William the Conqueror's half-brother; the third Earl of Rutland; one of the Yorkes, who built the existing house; Colonel Samuel Sandys, who suffered, as did the building, for his devotion to Charles I.; Sir Samuel Danvers; Sir Baldwin Wake, who killed his eldest son there over the card-table, hid the body, and has ever since haunted the house in a grey dressing-gown, sharing this nocturnal duty, somewhat inappropriately, with the ghost of another owner whose wife and her lover left him to starve in a priest-hole; and various members of the Willeys family. In the middle of the nine-

* The Attorney-General had a fixed salary of £7,000 a year, and the Solicitor-General £6,000, in addition to which each received fees for any "conscientious work." Simon's share was as follows:

1911-2	...	...	£10,247	1913-4	...	...	£18,362
1912-3	...	...	£12,415	1914-5	...	...	£14,700

teenth century the house was bought by the Rev. Samuel Yorke, a descendant of its builder, and from him it passed to Thomas Garner, a well-known architect, who restored it. One of its tenants, by the way, was a certain Captain John Barclay who, for a bet of £3,000, walked a thousand miles in a thousand consecutive hours in July, 1809: his arrival at Newmarket at the end of the exploit was celebrated by a peal of church-bells.

Simon tempered these old-fashioned charms by modernising the interior to some extent, installing a private electric-light plant (which, in my limited acquaintance with it, was liable to reduce its illumination to a standard more suitable for the activities of the two ghosts than for those of a busy lawyer and politician) and, such was his hesitation to let temptation go too far, a half-sized billiard table which behaved after the incalculable manner of such compromises. He found his new home comfortably near Oxford, where he had become standing counsel to the University after the late Mr. Justice Hamilton was raised to the Bench, and where he was often to be found dining at All Souls. It was also convenient for riding to hounds and for a number of golf-courses; Simon was developing a passion for golf.

CHAPTER SIX

SIMON'S outstanding controversial speeches in Parliament as Solicitor-General were on the House of Lords, Tariff Reform, and Home Rule. These themes seem rather remote nowadays, but, as a specimen of Simon's already mature House of Commons style, it is of interest to turn to his speech in February, 1912, on the Home Rule Bill which the Government had announced its intention of introducing.

F. E. Smith, for the Opposition, opened the debate by complaining that the Government ought not to proceed with any steps towards granting Home Rule to Ireland until they had carried out their intention, as stated in the preamble to the Parliament Act, of reforming the House of Lords, whose powers that Act had limited. Simon rose to rebut this objection.

He began by referring to the fact that Smith had been invited by the Conservative leaders to sit with them on the Front Opposition Bench, an invitation which meant that in all probability he would be given office in the next Unionist Ministry.* "The right hon. gentleman will, I hope, allow me to begin by expressing from this side of the House our sincere congratulations on his appearance as a speaker on the Front Bench opposite." And with this compliment to an old friend and rival, Simon proceeded to tear the other's speech to shreds. Smith had quoted various old statements by Liberal leaders in support of his argument, and, said Simon, "No coroner's officer that ever lived took such pleasure in searching for *dissecta membra*." These "scattered remains" might to some extent be left for the original speakers to answer: what was primarily important at the present moment was what had been said at and during the recent General Election, and not at remote periods in the past. To prove its case, the Opposition must show—as the previous speaker, said Simon, had not

* It may be mentioned that Smith had refused a similar invitation two years previously, when he was in disagreement with his leader's tactics over the Budget.

even attempted to show—that the Government, in giving Home Rule priority to proposals for reconstituting the House of Lords, was breaking a pledge or perpetuating an injustice.

“Hear, hear!” chorused the Tories, and Bonar Law, their leader, nodded.

Observing that this was evidently an agreed point, Simon explained that he proposed to deal with it at once: the Tory spokesman, he claimed, had not produced a single piece of evidence for the charge among all the extracts he had read. Moreover,

Let us see whether the whole contention which the right hon. gentleman put forward is not based on an assumption which is quite without foundation. It is based and, as it appears to me, it *must* be based on the assumption that, if Home Rule were to be postponed until the House of Lords is reconstructed upon Liberal lines, the difficulty of carrying Home Rule would be increased and the obstacles put in its way when it left the House would be greater. This is a complete misunderstanding.

Reform of the Lords, Simon pointed out, would certainly not lessen the chances of Home Rule; after a long struggle the Liberals had managed to curb the power of the Lords and, in whatever manner the Upper House might eventually be reformed, its veto would not be restored to it. The Government could not forget that in all the four years of the 1906 Parliament, not a single Bill against which the meagre Tory Opposition had divided had ever passed the Lords. Thus, “It has never entered into the mind of those responsible for the Parliament Act, it has never entered into the contemplation of the Liberals who supported it, and it has never been dreamt of by their supporters in the country, that we, who for years have suffered under the unrestricted powers which in our view the House of Lords has abused, are going as the result of the reconstitution of that body to restore to it its unlimited veto.”

It was still true, he admitted guilefully, that, if a Home Rule Bill went up to the House of Lords from the Commons,

"it will be in circumstances which involve some handicap on one side or the other." But who would suffer the handicap? Certainly not the Tories, who still had a large majority in the Upper House. "Does any human being suppose that any proposals of ours for reconstituting the House of Lords are going to increase that disparity?"

Bonar Law rose to ask if the House was to understand that, if and when the Lords were reformed, "there is to be no method by which there will be an appeal to the people." Simon made the dry answer that he did not think that any constitutional authority in former days had suggested that the House of Lords had any right to insist on an appeal to the people. "The Party opposite are supposed to be in special charge of the Constitution. I should have thought that a Constitution which is representative in its nature, and which depends essentially upon the periodic choice of the constituencies, would have met the case." And he proceeded to ask a question of Bonar Law: If the Tories came back into power, did they propose to repeal the Parliament Act? Bonar Law replied that it would be a debt of honour for his Party not to repeal the Parliament Act except simultaneously with a reform of the House of Lords. Simon said he frankly admitted that this answer was satisfactory and—unkindly referring to a recent episode in a debate on another Bill, when Bonar Law had written to the newspapers to qualify a pledge which he had uttered in an unguarded moment in the House—that "it requires no supplementary correction in the Press."

After a few more thrusts at his opponents' admiration for the Lords, he returned to the opening argument of his speech. Was it really suggested, he asked, that the fact that the Liberals intended to introduce Home Rule immediately after the Parliament Act had been hidden from the electorate? "Some things have been said so often that I am quite confident that hon. gentlemen opposite must really suppose them to be true. I desire to call the attention of the House to the extraordinary way in which perfectly honourable people will persuade themselves in quite a short space of time that history is quite different from what we thought it was." He

quoted as an example of this a recent statement by Sir Austen Chamberlain, who had denied that Home Rule had been regarded at the election as likely immediately to follow the passing of the Parliament Act; "In my case," Sir Austen had insisted, "I only said anything about Home Rule in one single speech." Simon commented:

We all allow, nobody more than I, that when the right hon. gentleman says this he is expressing candidly and clearly his memory, so far as his memory serves, of recent events. But I had the curiosity to look it up, and if this is one single speech, it is a single speech which has been repeated a great many times! I looked it up in the files of *The Times*, and, as one would expect, a statesman of the right hon. gentleman's position is reported with reasonable fullness even at election time. I find—with one single exception to which I will refer in a moment—that there is no single speech of the right hon. gentleman during the election of 1910 in which he did not refer to the specific point that the Government, in his view, were under the immediate control of the hon. and learned gentleman the leader of the Irish Party [Mr. John Redmond], and that Home Rule was coming as a consequence of the passing of the Parliament Bill. He said so at Glasgow on November 25, at Edinburgh on November 29, at West Bromwich on December 1, at Darlington on December 2, at Newcastle-on-Tyne on December 3, at Oldbury on December 8, and at two other places. Really, the right hon. gentleman is not doing justice to his own powers of repetition!

The single exception, he added, was when Sir Austen went to Edinburgh to address a Scottish audience on Tariff Reform, and there, Simon said with a smile, "I can well believe that he had his hands full" without referring to Home Rule.

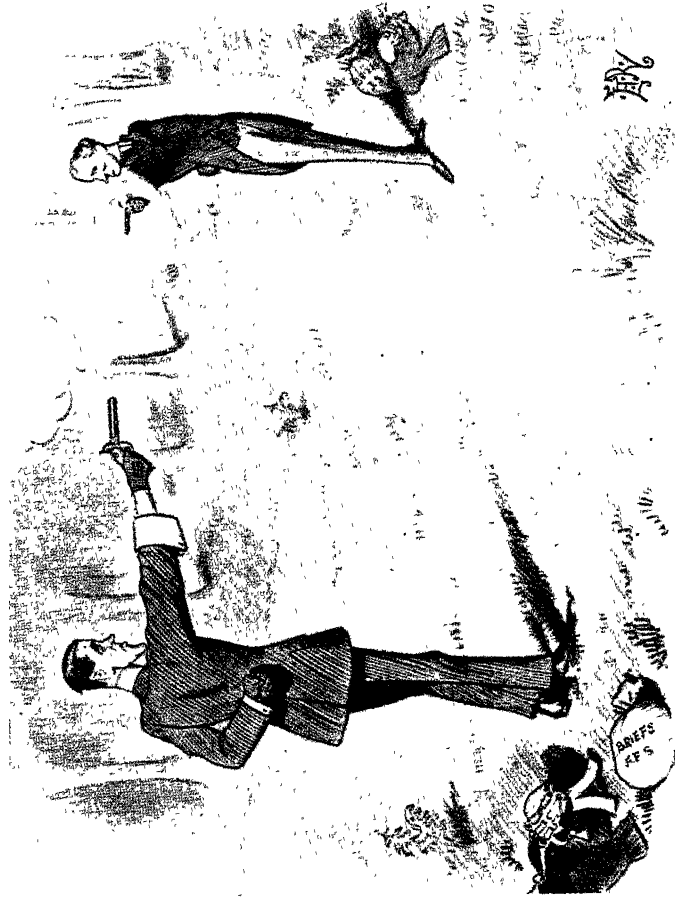
So much for the strength of the Tories' memories about the last election. But Smith had complained that Mr. Asquith had only spoken once, except when he was heckled, about Home Rule throughout that election. Polling had

begun on December 2, 1910, and Simon quoted *The Times* for that date. He pointed out that, in the reports of the previous day's meetings given in this Conservative newspaper, Mr. Asquith was shown at Wolverhampton to have specifically discussed the Unionist suggestion that he should submit the question of Home Rule to a referendum; that the account of a speech by the Foreign Secretary, Sir Edward Grey, was headed, "Home Rule and the Referendum"; that a speech of the Secretary for War was headed, "Mr. Haldane and Home Rule"; and that Lord Crewe, the leader of the Liberals in the House of Lords, was reported as arguing in favour of Home Rule. Simon went on:

I say, in the face of this, that it is a fable, however honestly entertained by hon. and right hon. gentlemen opposite, to say that this question was not put before the people of this country by both sides as an immediate legislative proposal to follow as the result of, and consequent upon, the passing of the Parliament Bill. To assert the contrary is really to forget most recent history, although it is history which we have all had a part in making.

Both sides of the House had said precisely the same thing at the election—namely, that if the Parliament Bill were passed, the Liberals would press on with Home Rule. Simon pointed scornfully at the Opposition:

There they sit—a row of prophets—major and minor! They, every one of them, prophesied the very thing which has come about. And now they come down to this House and go about the country, and go through the solemn pretence—although I believe they have persuaded themselves of it—that the very thing which they asserted was about to happen is a monstrous fraud upon their own expectations. So far as I can observe, this particular attitude of the Opposition is unique in two important particulars. In this matter, in prophesying that Home Rule would follow the Parliament Bill, they all said the same thing—and *it is true!*



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THE PROFESSIONAL DUELLISTS

Both of 'em full of lead after a few minutes, but, bless you, it made
no difference really

[An "E. T. R." cartoon after the House of Lords debate between F E Smith
and Simon in February, 1912]

After thus turning the tables on the Government's assailants, Simon discussed the further point whether it was right for the Liberals to keep power by relying on the Irish Members' votes, and he ironically pictured the Tories saying, "An Irishman shall have no Assembly in his own country where he shall be represented. This Parliament is the only place to which he shall come. But, when he comes here, he doesn't count." Such contradictions, he asserted, helped to explain the failure of the Conservatives to win recent elections. Besides,

They tell the sober British electorate that the Constitution is bursting to pieces. Nobody believes them. They tell the sober British elector that the country is in the midst of a revolution; he knows it is not true. Their most characteristic exponent in the Press [a former editor of the *Observer*], who until recently has been content with giving us doses of hysterics every Sunday, has now gone further and gives us an epileptic fit every twenty-four hours. I say, with great respect to hon. gentlemen opposite, that this is not the way to win elections. The British people are much more sober and moderate people than those who appeal to them in this way day after day; and this language of exaggeration in the mouths of hon. gentlemen opposite goes a long way to explain why the constituencies will not support them.

At this F. E. Smith cried, "We're a bigger party than you are." "If the right hon. gentleman is content with the present position," Simon retorted, "so am I."

And so he came to his last point, the Conservative suggestion that the Liberals were bringing forward Home Rule not from conviction or conscience, but as the result of a discreditable bargain with their Irish allies in the House. He reminded his audience that for at least a quarter of a century the Liberals had openly favoured Home Rule. "For a quarter of a century at every election and in every one of your newspapers you have denounced us as 'separatists'; for a quarter of a century you have claimed the name of Unionist, just in order that you might wrap your mantle round your-

selves and thank Heaven that you are not like those who are Home Rulers." Did not everybody know that the Liberal Party had split in 1886 over Home Rule and endured twenty years in the political wilderness because of its devotion to that idea?

The present Lord Winterton here interjected, "And you'll be there for twenty years more," a taunt (unexpectedly confirmed by history) which Simon did not stop to answer.

He did not doubt, he went on, that the men who then left the Liberal Party were actuated by sincere motives and that it was a real sacrifice they made, and he added, as if casually, that Sir Edward Carson, too, "at a date and in circumstances not precisely ascertained, abandoned the amenities of the National Liberal Club." With which irritating reminder to one of the most energetic of his opponents, Simon reached his peroration :

On our side we are entitled to claim, and we do claim, at any rate the treatment which honest people maintaining opinions they have long held should receive from honourable men. We shall bear with great composure the taunts hon. gentlemen opposite level against us in this regard, for two reasons—first, because it is only one more proof how utterly they misunderstand the real mind and temper of their own countrymen; and, secondly, because we believe that the golden moment which was spoken of by Mr. Gladstone twenty years ago has returned. It will be our consolation and satisfaction, in spite of the taunts of hon. gentlemen opposite, at length to effect by a tardy measure of justice a real reconciliation between the Irish and the British people.

In the face of such debating strength as this it is not surprising that when Sir Rufus Isaacs, the Attorney-General, was next year appointed Lord Chief Justice and became Lord Reading, Simon was invited to succeed him, both as senior Law Officer and as a member of the Cabinet. He was barely forty, and for very many years there had been few Attorney-Generals under the age of fifty. Moreover, he was the first Attorney-General ever to enter the Cabinet on receiving that

appointment (Isaacs had received Cabinet rank in the middle of his term of office as compensation for being passed over for the Woolsack) and thus set a precedent—though Mr. Asquith denied that he wished to create one—which was afterwards followed in the cases of Sir Edward Carson and F. E. Smith during the War.

More and more he was entrusted by the Government with the task of winding up important debates. Frequent notes reached him in his chambers from the Prime Minister asking him to carry out this task. It must be admitted that the winding-up speech in this last pre-War Parliament was no longer as important as it had always been in the past. For one thing, the dinner-hour was later, and so there was time for the big guns to thunder earlier in the evening; for another, the twelve o'clock rule had been changed to eleven o'clock, so that the after-dinner debate was still further curtailed; and, finally, the newspapers "went to bed" earlier, because of their wider circulation in the country, and it was necessary that the main arguments on either side of the House should be presented sooner than in the old days if they were to receive adequate prominence in the Press. Nevertheless, Simon's being asked so often to make the final speech for the Government hugely increased his political prestige in the House and outside it.

§

His professional work also kept him very busy.

One of his odder tasks was to prosecute Jack Johnson, the coloured heavyweight champion boxer of the world; Bombardier Wells, an aspirant to that title; and three other persons, including the speculator "Jimmie" White, for threatening to commit a breach of the peace. It rose out of a fight which White was promoting between Johnson and the "white hope" Wells at the Earls Court arena: a wild agitation was worked up to stop the match, for various reasons ranging from the danger of children being corrupted by seeing cinematograph films of it to anxieties lest a black-and-white contest might rouse racial disorder in the tropical portions of the Empire. The first objection was supported by various

prominent Free Churchmen; the other by *The Times*. Yielding to this agitation, the Government decided to prevent the fight and ran the principals into Bow Street Police Court.

It was Simon's case to show that the contest would be illegal and a breach of the peace. To do this, he had to argue that it must be regarded not as an exhibition of the noble art of boxing, which is legal, but as a brutal prize-fight which contemplated the serious injury of one of the contestants. He sought to establish this point by proving that Johnson was so redoubtable a fighter that no previous challenger had managed to put up a decent show against him, and his recital of the negro's various knock-out victories was immensely gratifying to that far from modest pugilist. "I do not know exactly what a kidney-punch is," said Simon in the course of his speech. There was a stir in court, and Jack Johnson was heard to mutter, "I'll show you!" Or so Simon says.

The argument was ingenious and might have convinced the Bow Street magistrate, but the defendants themselves called off the fight because a High Court Judge had simultaneously decided that it could not be held at Earls Court under the terms of the lease.

He also led the prosecution against Ernest Terah Hooley, the financier. Hooley was one of the most prominent figures in the City, though his reputation had lately been somewhat dimmed. He had juggled with millions—his own and other people's—but his downfall now came over a trumpery matter of £2,000, which, Simon alleged, he had obtained by false pretences from a foolish young Yorkshireman who had just come into a fortune. This youth, Tweedale, was introduced to Hooley by Jimmie White (the ex-bricklayer turned financier whom we have just met in the Jack Johnson case), and within two months Hooley had taken possession of half Tweedale's fortune of £40,000. He then put Tweedale under legal obligations to pay him the rest and, since the youth had exhausted his ready money, took bills from him instead; finally, he sold Tweedale a share in some property in the Midlands for a mere £2,000. Hooley made the mistake,

however, of signing a document which stated that the property was not mortgaged, though in fact it was. The authorities had been on Hooley's trail for some time, and here at last was their chance to catch him. It is, however, just possible that he was telling the truth when he said that he had signed the document hastily as he was running to catch a train and after asking his solicitor if it was in order.

Simon brought out in cross-examination the whole record of Hooley's dealings with Tweedale, culminating with the crushing question, "Is there any single transaction from first to last to which you can refer me where you carried out the promises that were contained in the document you signed?" After some hedging, Hooley was obliged to answer, "No." After which Simon asked most politely why Hooley should have paid £700 to White, who was professing to act as the youth's financial adviser. Another awkward question of this kind was answered by Hooley by the scornful words, "Do you think I should have been such a flat?" This allowed Simon, with one eye on the jury, to remark affably that he was the last person in the world to suggest that Hooley was a flat.

The defendant, conscious that things were going badly for him, at last made the apparently sporting offer to return Tweedale the £2,000 which were the subject of the charge. "Have you got the money? Do you mean cash?" Simon asked with a show of interest, but it appeared that Hooley was only offering to pay back some of Tweedale's unnegotiable bills. And he was even reluctant to part with these to Simon, as if dubious of the latter's good faith, till eventually Simon blandly offered to give Hooley a personal receipt for them. At this there was great laughter in court, whereupon Mr. Justice Phillimore, perhaps a little unjustly, rounded on Hooley and told him that this was no laughing matter! Moreover, the Judge pointed out, a criminal charge could not be squared by repaying the sum at issue. In the end Hooley was sent to jail for twelve months in the second division, the mildness of this sentence being possibly due to judicial doubts whether he had deliberately signed the misleading document.

He was defended, by the way, by Tim Healy, whom Simon had been chiefly instrumental in persuading to come over from Ireland to practise at the English Bar and for whom he had organised a friendly reception. It must be admitted that Healy never quite fulfilled expectations in England, perhaps because methods and arguments which were powerful in the Irish courts were not always so well fitted to his new environment. Indeed, in one case in which they appeared together and it was agreed that Simon should open and Healy sum up for their clients, Healy's cross-examination so staggered the solicitors that these begged Simon to make the closing speech as well: he had the thankless task of persuading Healy to stand down for him. However, as we know, Healy became in due course the first Governor-General of the Irish Free State and never regretted accepting Simon's invitation to move to England.

After Hooley Simon found himself prosecuting another enterprising financier in the person of Horatio Bottomley, but was not so successful. We may note that some years later, when Bottomley had at last been laid by the heels and was vaguely discussing the possibility of appealing against his sentence, he announced that, if only he could collect the necessary funds, he would brief Simon to represent him. This was not an altogether empty compliment, for, with all his faults, Bottomley was himself a brilliant advocate and a very competent judge of other people's ability.

To be sure, they had already met once before, when Simon had persuaded a jury for the first time to find Bottomley guilty of fraud, in a case brought against him by a most literal-minded gentleman named Murray. Simon (who tells with gusto this story against himself) learned before the trial that, after buying a number of worthless shares from Bottomley, Murray was invited to luncheon by that individual, and said to Bottomley during the meal that he could not help criticising him because he had attacked the Salvation Army. "What you say does you honour, Mr. Murray," Bottomley had replied, "but I feel obliged to attack the Salvation Army because they take people's money without accounting to them for it," an untrue as well as hypocritical remark. Simon felt

that, if Murray recounted this conversation, it would make a considerable impression on the jury, and so, when he put him in the witness-box, he led him gently towards it.

"So Mr. Bottomley invited you to luncheon, Mr. Murray. Please tell the jury what happened."

"Well," said the witness, "I arrived at the restaurant and an attendant took my hat and coat and I went and washed my hands."

"Yes, yes," Simon agreed, "but what happened at the actual luncheon?"

"First of all we had some hare-soup, and dumplings. Yes, I'm sure there were dumplings. Then we had fried smelts; and then—yes, to be sure—Mr. Bottomley ordered two portions of roast saddle of mutton."

Impatiently Simon interrupted him. "Yes, yes, Mr. Murray, but——"

Bottomley jumped to his feet and appealed to the Judge, "I really must ask your Lordship to stop the learned counsel interrupting his own witness. *The vegetables! The vegetables!*"

§

Simon was kept busy in 1912 in his old battlefield, the Railway and Canal Commission, in a case which lasted for no fewer than seventy-four days. It concerned the transfer of the country's telephone system from a private concern, the old National Telephone Company, to the Post Office. The Company had made a contract in 1905 with the Postmaster-General to sell to the State on December 31, 1911, all the Company's plant which should be in use on that date. Naturally in 1905 it was impossible to assess what the value of this plant would be six years later and the parties agreed that all disputed questions should be referred to the Commission. In due course, which means in June, 1912, the matter came up for decision. Both parties agreed generally on the material value of the plant, but there was considerable dispute about what it was worth as a going concern. The Company asked for nearly twenty-one million pounds; the Post Office suggested a much smaller figure.

As the closing speeches on either side took nearly four weeks to deliver, I can scarcely be expected to present an adequate summary in a few lines, but, briefly, the question was this: From the Company's point of view no other purchaser could be so desirable as the Post Office, because nobody else could use the plant as it stood; any other purchaser would have to remove it and to break up much of it. Still, other purchasers might be found. From the Post Office authorities' point of view, if they had not taken over the plant as it stood, they would have had to construct a duplicate in order to be in a position to take over the service on the agreed date. The harassed Commissioners had to balance both the actual and the hypothetical costs, including such items as the expense of "skilled direction" necessary to erect a plant, the proper sums to set off for depreciation, and the amounts due for preliminary investigations, enquiries, way-leaves, and so on. As there were no fewer than half a million telephone stations scattered about the country, the last items became the centre of the dispute. Simon bore the brunt of all this for the Post Office—it was the sort of complicated case he revelled in—and had the final satisfaction of seeing the Company's claim reduced by the Commissioners from twenty-one to a mere twelve and a half million pounds.

Simon's winding-up speech lasted nine days, and a humorous paper invented a dialogue between two telephone-subscribers. "Can you explain," one asks, "how it is that I can never get through to your office nowadays?" "It's because the Solicitor-General has been speaking on the 'phone for nine days," the other replies.

We are all familiar with the publicity and excitement which recently attended the maiden voyage of the *Queen Mary*. On April 10, 1912, there were similar manifestations when the latest White Star liner, the *Titanic*, set out on her maiden voyage across the Atlantic. She was a vessel of 21,000 tons, the largest ever built till then, and carried 1,300 passengers and a crew of 900—over 2,200 souls in all. She followed what is called the "Outward Southern Track" to America; the weather was clear and the sea very calm, and

everybody had hopes that she would make a spectacular trip. Half-way across she received wireless messages from other liners warning her of the presence of ice, for, though she was steaming twenty-five miles south of the area marked "Field-ice between March and July" on the North Atlantic charts, she was well within an area marked "Icebergs have been seen within this line in April, May, and June." As it happened, the Arctic ice floated further south in the spring of 1912 than for many years previously, while the exceptionally calm weather minimised the signs which usually show that bergs are near.

Captain Smith, a seaman of the highest reputation and ability, was confident that by posting two special lookout men in the crow's-nest he would receive adequate notice of any icebergs which might be floating on the vessel's route, and on the night of Sunday, the 14th, the *Titanic* was speeding along at twenty-two knots, which, though something less than her full capacity, was a very considerable speed. Just before midnight the lookout men gave warning of a huge berg immediately ahead; the officer in charge instantly stopped the engines and changed course, but, before she could be turned, the *Titanic* travelled about five hundred yards and struck the berg. Twenty minutes after the collision the captain realised that she was sinking, though she was supposed to be unsinkable, and ordered the crew to uncover the lifeboats, all of which were on the boat-deck; this work went rather slowly, because the men did not all at once assemble at their posts—there had been no boat drill, nor was this compulsory in those days—but by twenty minutes after midnight the order was given to swing out the boats. Passengers had meanwhile been roused by stewards and helped into their lifebelts, and they were gathering on the boat-deck. Ten minutes later women and children were told to enter the boats, and many did so. Unfortunately, several of the boats were lowered into the water without their full complement of passengers. One, for instance, took only twelve people instead of the forty for whom it was designed; two others, each capable of holding sixty-five, took only twenty-seven and twenty-eight respectively. There is no doubt that various

causes contributed to this: many women were afraid to enter the boats, which were nearly seventy feet above the water; others refused to leave their husbands; some of the ship's officers wrongly feared that a full complement would buckle the boats; while a number of passengers thought themselves safer in the liner than in the boats, especially as the lights of another ship could be seen in the distance and it was known that a third ship was on her way to answer the *Titanic's* appeal for aid. Some of the boats were rushed, and the crew had to force men out of them. Third-class passengers could reach the boat-deck only by two approach ladders, which delayed them; also, many of these poor people were reluctant to abandon their possessions in the steerage.

Now, the *Titanic* carried sixteen wooden lifeboats of normal construction and four collapsible boats, with a total accommodation for 1,178 people, which meant that barely half the ship's complement of passengers and crew could in any circumstances have been saved in them. But, apart from the premature lowering of the wooden boats, it appeared that the sailors were too busily occupied to be able to launch the collapsible boats at the right time and in the right way, so that two of these were never used at all except as rafts. There were, however, 3,560 lifebelts dotted about the vessel and forty-eight lifebuoys.

Two and a half hours after striking the berg the *Titanic* sank, the ship's band playing gallantly to the last. Till then the vessel's lights had somewhat illumined the scene, but, as she was sucked under, there was utter darkness. Men swam round and round, trying to reach the lifeboats, some of which were able to pick up survivors, but some not. When at last help came, it was found that of the 2,200 people who had been on board only about 700 had been saved. Captain Smith went down with his ship, with three-quarters of his officers and crew.

When the magnitude and horror of the disaster became known there was much concern at the fact that, while two-thirds of the first-class and second-class passengers were safe, only a quarter of the third-class had been rescued. Here are the approximate figures:

		<i>First Class.</i>		<i>Second Class.</i>		<i>Third Class.</i>	
		<i>Total.</i>	<i>Saved.</i>	<i>Total.</i>	<i>Saved.</i>	<i>Total.</i>	<i>Saved.</i>
Children ...	6	6	24	24	79	27	
Women ...	144	140	93	80	165	76	
Men ...	175	57	168	14	462	75	
		—	—	—	—	—	—
		325	203	285	118	706	178

It is clear that the proportion of the steerage passengers who perished was in appalling contrast with the other classes. There was an outcry both in Britain and America that the third-class passengers had been left to their fate, and specific charges were also levelled against certain people on board, who were accused of negligence or cowardice. An enquiry was held in both countries, at which the circumstances of the disaster, the conduct of the rescue work, and the various allegations were minutely considered.

At the English enquiry the Wreck Commissioner, Lord Mersey, and his assessors sat for thirty-seven days and heard nearly a hundred witnesses. Rufus Isaacs and Simon appeared for the Board of Trade, which submitted a long series of questions for elucidation, while Sir Robert Finlay, K.C., represented the White Star Line, and Mr. Scanlan, M.P., the National Sailors' and Firemen's Union.

It was shown that Captain Smith was not out to break speed records and, further, that the last and most urgent wireless warning of ice on his route had never reached the bridge. As for the route he had chosen and the speed he had used, he was following a practice which others had proved to be satisfactory over a number of years.

Simon examined at great length Mr. Sanderson, a manager and director of the White Star Line. He suggested to the witness that there should have been lifeboat accommodation for every person on board, but Mr. Sanderson considered that this would have been unwise because it would have meant hopeless congestion on the boat-deck in an emergency. Moreover, another witness, Sir Walter Howell, head of the Marine Department of the Board of Trade, admitted that the scale of lifeboat accommodation in the *Titanic* was in

accordance with the official regulations which had been fixed in 1894 and not since altered.

Mr. Bruce Ismay, a survivor and the president of the American side of the Line, told the court that the *Titanic*, which had been built regardless of expense at a cost of about a million and a half pounds, had been regarded as unsinkable. He had travelled in her, he said, as an ordinary passenger, though he admitted that he had not paid a fare, and he strenuously denied having interfered with the navigation of the ship or made requirements as to speed from the captain. Having been blamed in some quarters for leaving the ship while so many others were still on board, he explained that he had only entered a lifeboat when this was already being lowered and nobody else was waiting to enter her. Several other witnesses testified to the work he had done in helping women to escape.

One of the sailors, William Lucas, explained that the lifeboats were not filled to capacity because there were no more women on the boat-deck. It appeared also that certain of the lifeboats were afraid to approach the spot after the ship had gone down, for reasonable fear of being swamped by the swimmers. Other witnesses testified that the lifeboats were told to pull away from the sinking ship for fear of being sucked under by her, and then to stand by; but in the darkness after she disappeared it was difficult to pick up the poor creatures in the water. One survivor added that there were not enough sailors in his lifeboat to enable him to row back to the scene after the liner sank.

John Jonghin, a chief baker, examined by Simon, gave a vivid description of the last incidents of the wreck. He described the difficulty of persuading women to enter the lifeboats and how he and other members of the crew had had to use force to save the women's lives. Towards the end he went down to his own quarters and took a drink; when he returned to the boat-deck all the lifeboats had gone, but he found a pile of deck-chairs, which he flung overboard for swimmers to cling to. Then the ship gave a lurch and hundreds of people were piled on top of one another. He clung to the rail and, when the *Titanic* plunged, he found

himself in the water; after swimming and floating for nearly two hours, he swam to one of the collapsible boats, which was lying on its side and already supporting a score of men. One of these pushed him away, but another, a cook, supported him. Later a lifeboat approached and offered to take ten, but only ten, men on board; the witness swam to it quickly and was saved.

It was incidentally alleged by one witness that a sailor had struck two men on the head when they tried to reach a boat from the water, but Lord Mersey said that the court could not receive evidence of any alleged criminal action; nor, he remarked, was it his function to determine various ethical questions which had been raised in the Press.

There was a great deal of discussion about the reasons why so few of the third-class passengers were saved. Some five hundred of them, it was said, were foreigners and did not understand the orders given to them; but apparently a number of these were Irish emigrants. One witness said that he had great trouble in launching his lifeboat because some of these foreigners tried to rush it, but other survivors spoke of the excellent discipline maintained and how a long line of third-class passengers, including many Irishmen, had patiently waited while the women and children were taken off.

The court finally held that the high speed and the route chosen were both responsible for the disaster, but that no blame attached to Captain Smith in respect of them; that more men should have been set to look out for ice; that the discipline during the lowering of the lifeboats was good, though the organisation should have been improved; and that the lifeboats should not have been lowered without more people being first taken into them, though this could not be blamed on the officers or the crew. It criticised both crew and passengers, however, for the conduct of the boats after the ship went down, holding that several, for fear of being swamped, failed to make the necessary efforts to save survivors who were in the water. The court did not accept the charge that first-class and second-class passengers had been given any preference in the boats, and considered that the reluctance of the steerage passengers to leave their belongings

and the distance from their quarters to the boat-deck were mainly responsible for the disproportion in the numbers of survivors. In regard to one of the first-class passengers, it was found that a grave charge against him of bribing the men in his lifeboat to row away from the drowning people was unfounded, though, at the same time, "if he had encouraged the men to return to the position where the *Titanic* had foundered, they would probably have made an effort to do so and could have saved some lives." Further, the *Titanic* was held to be properly constructed and equipped, though many recommendations were made by the court as to future equipment; for instance, that the number of lifeboats should be based on the number of persons on board and not, as in the past, on the tonnage of the vessel; that there should be proper lifeboat drill; and that ships in ice areas should reduce speed at night.

Many observers had anticipated that the Board of Trade would be censured by the court for not having made more stringent regulations for safeguarding liners' passengers and crews. One American newspaper, indeed, suggested that it had escaped this censure because of the "English stupidity and English complacency" shown by the court responsible for the enquiry. But it may be presumed that the handling of the case by Simon and his colleagues was largely responsible for the form the findings took.

In 1913 he prosecuted a naval warrant officer named George Charles Parrott under the Official Secrets Act for disclosing information about the positions, armaments, and equipment of the Fleet to a German agent in Belgium. Parrott had been largely concerned with the armaments of the *Agamemnon*, a battleship of which he became senior gunner, but whether it was about her or about other matters which he provided the information was not clear. A special point of interest in Simon's handling of the case was that, though he was certain that Parrott had given something away to the Germans, he did not know precisely what it was; this made it much more difficult to prove the prisoner's guilt.

It was known that Parrott had suddenly asked for leave and, in defiance of the regulation that no serving officer may



ATTORNEY-GENERAL, 1913

go abroad without permission, had set off for Ostend one day after sending a telegram to Berlin. As he was already under suspicion, he was searched at Dover but, when nothing incriminating was found on him, he was allowed to go on the boat. A detective followed him and, at Ostend, saw that he was met by a man who, without speaking to him, led him to a secluded spot on the other side of the town, where they had a long conversation. When he returned to England he was again questioned, court-martialled, and dismissed from the Navy. He then went to London and under a false name entered into correspondence with his friend in Germany; he made a journey to that country and, when he was finally arrested, a letter from Berlin was found, asking for specific information about certain naval matters and enclosing money.

Parrott's defence, which to-day has a familiar ring, was that he aspired to be a journalist writing on Service topics and that the money came from a German woman whom he had befriended; but he was unable to provide adequate details of her or to explain many of his actions in the recent past. Mr. Justice Darling, who tried the case, suggested that he might have been blackmailed by a foreign woman spy who threatened to make trouble between him and his wife, but this was apparently mere conjecture. The vagueness about what precisely Parrott had been doing was shown once more when, after sentencing him to four years' imprisonment, the Judge urged him to make a clean breast of things in expectation of obtaining a remission of part of his sentence. Whether he did so or not we do not know.

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Not long afterwards it was announced that, at the desire of his Party, Simon was to fight North-West Manchester at the next General Election, which, but for the War, would have been held in 1915 or 1916. North-West Manchester had always been regarded as one of the key seats in the country, and its history was strewn with distinguished corpses. Mr. Winston Churchill's defeat there by Mr. Joynson-Hicks (the later Lord Brentford) at a by-election in 1906 had been a potent cause of the latter's rise to political prominence. Then

in 1910 "Jix" was himself defeated by the Liberal, Sir George Kemp, by whom even Bonar Law was subsequently beaten. After this Sir John Randles had won the seat back from the Liberals by defeating the present Lord Hewart at a by-election in 1912, and it was now intended that Simon should seek to regain the lost Liberal paradise.

Hearing the news, Sir John Randles, who must have felt a little uncomfortable about it, assured the Press that "I recognise the compliment to North-West Manchester in bringing forward the strongest possible Liberal candidate against me, but I feel certain that Manchester and Lancashire are so tired of this Government that no man, however distinguished, will persuade them to renew its lease of power." Journalists discovered, however, that many Jews in the constituency, erroneously regarding Simon as one of themselves—they knew he had been born in Manchester—were prepared to sink party differences when the time came and to vote solidly for him. As we know, the occasion for this never came: the War intervened and there was no General Election till 1918, by which time there was no more question of his fighting Manchester.

Not foreseeing what few others foresaw, he had to take farewell of his faithful electors in Walthamstow, and he did so gracefully in a letter which said, "We Liberals must not be content with defending the positions we hold; some of us must be prepared to attack the enemy where he is at present in possession. It is for this reason that I have resolved, after consulting the Prime Minister and with his approval, to accept the invitation from the Liberals of North-West Manchester to be their candidate when a General Election comes." The Walthamstow Liberals publicly expressed their regret and resignation at his decision, and privately marvelled that a politician should throw up a comparatively safe seat to fight a very doubtful one. Meanwhile they rejected a Socialist suggestion that the once "Liberal and Labour" Member for the division, Mr. Sam Woods, should be accepted as Simon's successor, and instead invited Mr. E. J. Horniman to become their next candidate.

And then the War came.

CHAPTER SEVEN

SIMON was known to belong to what may be called the Spacifist wing of the Liberal Cabinet which ruled the country in August, 1914. He and his colleagues, Lord Morley, Lord Beauchamp, Mr. Lloyd George, and Mr. John Burns, were understood to regard foreign affairs in a rather different manner from Mr. Asquith, Mr. Winston Churchill, and Sir Edward Grey, who had long since decided that war with Germany was almost inevitable. And so, when hostilities broke out on the Continent and Lord Morley and Mr. Burns resigned, it was popularly anticipated that Simon and Mr. Lloyd George would join them. The attitude of the last-named had apparently been misunderstood, but Mr. Churchill has told us that "On that fateful August 4 I thought Simon had resigned, and so did Lord Morley." He certainly hesitated, but, as Mr. Churchill adds, "the calamitous and terrible march of events, and particularly King Albert's appeal for aid to Belgium, suppressed this precipitate decision."

In Lord Morley's *Memorandum on Resignation* we find a reconstruction of a speech by Mr. Asquith, the Prime Minister, to his Cabinet on August 3, in which he said that "I have to tell the Cabinet that I have this morning the resignations of four of its members in my hands"; besides Morley and Burns, "we are to lose Simon and Beauchamp. I understand further that many others in the Cabinet, perhaps a majority, share their views, though not at present following the same course." Morley adds that, speaking after the Prime Minister, "I feared I must beg the Prime Minister to let me hold to my letter. Simon followed; briefly, but with much emotion, quivering lip, and tears in his eyes. He was even firmer than I was." But late that evening Burns arrived at Morley's house. "Have you heard the news?" he said. "Simon has been got over by the Prime Minister with some stipulations this afternoon, and after him Beauchamp. So you and I are the only two."

We know, however, that from the very beginning Simon opposed the idea of transforming the Liberal Government into a Coalition—"The formation of a Coalition would mean the grave of Liberalism," his then colleague, Dr. Addison, reports him as saying—and also the introduction of conscription. "One volunteer is equal to three conscripts, and the Kaiser already knows it," he said.

Having decided to remain a Minister, he became the Cabinet's chief adviser on matters of international law, and in that capacity rendered the country great service. He was largely responsible for preparing the Order in Council of March, 1915, which, as a reprisal for the Germans' attempt to institute a submarine blockade of the British coast, declared a blockade of Germany, a measure which must be regarded as one of the chief causes of her final defeat.

He had also to authorise, and in some cases to conduct, the prosecutions of spies. One such trial was that of a man named Kuepferle, who claimed to be an American citizen, but who, according to Simon, was a German officer. He gave his age as thirty-one, but certainly looked older. In appearance he was typically Teutonic: tight-lipped, stout, and clean-shaven, he appeared in the dock in a closely-fitting frock-coat and rimless spectacles and, after pleading not guilty, followed the proceedings with grim silence. The charge against him was of collecting, recording, and attempting to communicate information calculated to be useful to the enemy. This information related to warships in the Irish Channel and was contained mainly in a letter posted by Kuepferle to an address in Holland. The letter, Simon explained, looked as though it was ordinary commercial correspondence written on ordinary business notepaper, but the Censor's office had discovered writing in invisible ink between the lines.

The prisoner, he went on, had arrived in Liverpool from New York on February 14, 1915, as a third-class passenger in the *Arabic*. During the voyage he told a steward that he was an American citizen, and his passport, which had only just been issued, described him as such and stated that he was travelling to England and Holland on business. The *Arabic* had passed near to many warships south of Ireland.

The moment he landed he wrote a letter on notepaper headed "Küpferle and Co., Importers of Woollens, Brooklyn," as follows:

Just a few lines to let you know that I have arrived in Liverpool to-day and I am expecting to do business by to-morrow in London. I shall arrive in Rotterdam at the end of this week, and I hope to have a little rest there until I am sailing off again after a few days. If I could fudge about till I will be done with my business, you could get me on the station, but it is very hard to tell. Expecting you are prepared for me, I remain,
KÜPFERLE.

But, after posting this, he went to Dublin; two days later he returned to England, explaining to the passport officer at Holyhead that he was an American just about to sail for home. Then he went to London, stayed one night in an hotel near Euston and the next in another hotel near Victoria. By this time the police were after him, and he was arrested. Among his effects were found two lemons, a bottle of formalin, and, in an inner pocket of his coat, a steel pen. Now, as Simon told the court, most schoolboys know that, if you write messages in lemon-juice to which formalin has been added, the words become invisible and need to be treated with a re-agent before they can be read. Kuepferle's letter contained lines which were certainly written in this manner. Not only had the police proved that the nib of the pen had been dipped in lemon-juice, but one of the lemons, of which the skin was pierced, had also been chemically tested and shown to have been in contact with metal. The test, incidentally, was known as the "Prussian blue test," a name which in the circumstances was grimly apposite.

Kuepferle's story at Scotland Yard was that he had been born in Switzerland in 1887, had been taken to Brooklyn at the age of nine after his parents' death and, at sixteen, entered a clothing business there, afterwards becoming a shipping clerk. Armed with this experience, he set up in business of his own in Brooklyn as a woollen draper, but, when the concern failed, he took on the New York agency of

a Rotterdam wine and spirit merchant. This was still his occupation, and he was a naturalised American. So far as this story could be tested, Simon said, much of it appeared to be true. The message in invisible ink, he went on, referred to the position, type, and numbers of warships which Kuepferle had seen in the Irish Channel, and to the equipment and date of departure of a force which was shortly to leave for the Front; it ended with the words, "I have been up to the present twice held up for passports and must be quiet for a while." Such was the state of public excitement in those days about spies—especially when one had really been caught—that Simon thought it right to point out to the jury that counsel for the defence were carrying out their professional duty in appearing for the prisoner: it was, he reminded them, the proud boast of the English Bar that the help which a barrister could honourably give should not be denied to any man.

It appeared in evidence that, when in Brixton jail, Kuepferle asked for paper on which to send his solicitors confidential instructions and imprudently used some of this to write a message to a prisoner in an adjoining cell, in the course of which he said that "the whole of Belgium is in our hands and no longer exists"—a statement scarcely compatible with his claim to be a neutral American. He also wrote, "I believe Ypres and neighbourhood have now fallen. If I could only see the day when the whole English trickery is exposed and her preparation and even alliance made known by the Central [European] Allies. English shame must be made known, otherwise there will be no justice. . . . Oh, if only I could be at the Front again for half an hour!" This, Simon commented, was a strange desire for an American commercial traveller to express. "That is my sole remaining wish," Kuepferle's letter added, but "I shall not admit or say I am a soldier or know anything about military matters." He also spoke of the use of gas in Flanders:

The gas must have a great effect and be distasteful to the English. In any case, it is a stupefying death and makes them first vomit, like sea-sickness. It is a sure

death, and, if the War lasts some time, many more will be killed by it.

The letter, Simon submitted, clearly showed that the writer was a German soldier, and that his explanation that he was visiting Europe for business was false.

In cross-examination of one witness, Sir Ernest Wild, who defended Kuepferle, claimed that the discovery of the lemon and the formalin were no proof of the charges brought against his client. "Since formalin is a germicide," he argued, "may it not have been used on his feet for medical purposes?" Any effect that this ingenious plea might have had on the court was upset when Simon asked, "Whoever heard of formalin being applied to the feet with a steel pen?"

Simon began his cross-examination of the prisoner, who was, of course, giving evidence on oath, with a quiet but devastating question. "Tell the jury, Mr. Kuepferle," he said, "have you ever been an officer in the German army?" It was the question which he knew the prisoner could not stand, and indeed the unhappy man refused to answer it. He stood there silent, grey-faced, nervously fingering his lips. "Now, just listen," Simon repeated; "have you ever been an officer in the German army?" Again no answer. "Would you like my question translated into German?" Simon persisted, but Kuepferle shook his head. Simon turned towards the Judge: "With your Lordship's permission I will not press that question now, but"—he turned back to the prisoner—"it is my first question, Mr. Kuepferle, and *it will also be my last question.*" He passed then to other matters, and Kuepferle gave his answers, always with that dreadful first question hanging over his head.

The cross-examination was not finished when the court adjourned that afternoon. At dawn next morning, Kuepferle managed to escape observation and hung himself in his cell by tying a knitted silk scarf round his neck, standing on two large books from the prison library and tying the end of the scarf to the ventilator. He left a last message, so neatly written that it filled only one side of a small slate. It answered Simon's question at last:

To Whom it may Concern. My name is K pferle, n  at Sollingen in Baden. I am a soldier with rank which I do not desire to mention in regard on my behalf lately. I can say that I have had a fair trial of the United Kingdom, but I am unable to stand the strain any longer and take the law in my own hand. I have had many a battle, and death is only a saviour for me. I would have preferred the death to be shot, but do not wish to ascend the scaffold as a [here he inserted a Masonic symbol] and hope the Almighty Architect of this Universe will lead me in the unknown land in the East. I am not dying as a spy, but as a soldier. My fate I stood as a man, but cannot be a liar and perjure myself. Kindly I shall permit to ask to notify my uncle Ambrose Droll, Sollingen in Baden, Germany, and all my estate shall belong to him. What I have done I have done for my country. I shall express my thanks and may the Lord bless yours all.—K PFERLE.

The reading of this brave but quaintly worded message so impressed the jury at the inquest on the body that they asked if the slate might not be sent to the uncle, in order that the dead man's last wishes about his property might be carried out. It was handed to the Home Office, and many photographs of it appeared in the British Press. Whereupon a German newspaper characteristically denounced it as "an impudent forgery on the part of the English prison authorities. The separate letters of this interesting document are absolutely English. The capital letters are especially characteristic, and could never have been written by a hand which had learned to write German. We must therefore assume that behind this forgery there lies a tragedy of the most brutal kind." Such is German psychology.

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In May, 1915, Asquith resigned, but remained in power as head of a Coalition Ministry. Changed circumstances necessitated a compromise, and Simon, despite his correct

apprehension that coalition would mean the downfall of the Liberal Party, consented to remain a member of the Government. Asquith offered him the Lord Chancellorship, the highest honour of the legal profession, but he refused it and became Home Secretary instead. For many years both his friends and his enemies thought that this decision was a mistake and that, by subordinating legal honours to political ambition—for it was natural to suppose that this was his main reason for declining the Woolsack—he had sacrificed the substance for a shadow; in the unhappy decline of his political career at the end of the War this view seemed justified, but more recent events have utterly disproved it. The truth, however, is that what most deterred Simon from accepting the Woolsack was the thought that, after a brief and doubtless congenial career as Lord Chancellor, he would inevitably become for the rest of his life an *ex*-Lord Chancellor, hedged round with restrictions on his essentially energetic character. It was a prospect which appalled him.

As Home Secretary he had, apart from his advice to the Cabinet on larger issues, to deal in particular with such problems as the internment of enemy aliens (and their separation from those unhappy victims of mob malice, naturalised men and women of alien birth), the regulation of desirable and undesirable night clubs, and the general administration of the necessary but detested Defence of the Realm Act, commonly known as "Dora." One of the most important problems at this stage of the War was to maintain, not to say increase, the production of coal. Very many miners had joined the Army, and the shortage of coal was seriously interfering with the national economy. In those days the mines were the province of the Home Office, and Simon, after conferring with his Parliamentary Under-Secretary, William Brace, the miner M.P., and with Colonel Redmayne, the Chief Inspector of Mines, decided to call a conference of mine-owners and miners alike and to appeal to them to increase production by every possible means. The meeting was duly held at the Stoll Opera House in Kingsway, which was crowded from floor to gallery; every mine manager was asked to attend, every miners' lodge in the kingdom

sent a representative, and many owners were present. Never before or since in the stormy history of the British mining industry had so representative a collection of people assembled in a harmonious gathering. The late Robert Smillie, M.P., described it in his autobiography:

Sir John Simon, then Home Secretary, was in the chair, and he made a delightfully homely and clever speech, in which, in the best interests of the nation, he appealed forcefully for the highest possible output of the necessary fuel for domestic, industrial, military, and naval purposes.

Mr. Lloyd George followed with one of his most forceful speeches. He painted a picture of the miner which will never be forgotten by any who heard it. He said he knew the miners well, especially the sample which was native to South Wales. They were sweet singers, they were great politicians, they were great strikers, they were great soldiers—amongst the best in the world—and, finally, they were staunch friends. The miners' delegates seemed visibly to swell with pride as he told them what a fine body of men they represented. . . .

When the glamour of oratory had passed, however, I felt that Sir John Simon's speech, though painted in colours less garish, was by far the better appeal of the two.*

And, as a result of the meeting, coal production was enormously stimulated.

Smillie, by the way, tells a story in the same book of calling at the Home Office to consult Simon on some important mining matter. Unfortunately, the latter's usual private secretary, who knew him well, was absent, and his substitute asked Smillie what he wanted. "I want to know if Sir John Simon is in his room at present," said the visitor. The secretary's only answer was to enquire if Smillie had an appointment with Simon, and, learning that he had not, again asked superciliously what his business was. Smillie, a

* *My Life for Labour* (Mills and Boon, 1924).

dour man, replied, "My business is to see the Home Secretary." At this moment the door opened and Simon came out in his shirt-sleeves. "Hallo, Mr. Smillie," he said. "You're just the man I wanted to see! I want to consult you on a point that has just arisen." Smillie says he thought the secretary would drop through the floor.

It also fell to Simon to temper the censorship and the Press Bureau to shorn and indignant editors. He dealt with all these problems with conspicuous success; his calm persuasiveness was invaluable. Indeed, a writer in the *World* was so much impressed by the personality of this "pale young man, inclined to baldness, with an expression almost melancholy and an air of serious aloofness," that he declared prophetically, "One could imagine Sir John making an excellent Budget statement if he became Chancellor of the Exchequer."

Any chance of such promotion, however, seemed to vanish when, towards the end of 1915, he was known to have consolidated his objections to conscription and to be prepared to risk his whole future for his views. The late Major F. E. Guest, that *beau sabreur* of the Liberal Party, returned from Flanders to urge on the House of Commons and the Cabinet the necessity of introducing compulsory service, both as a means of bringing up the strength of the Army and in fairness to the men who had already volunteered for service. Simon took the line that conscription would do much more harm by dislocating the economic structure of the country—he had already reason to note the loss of man-power in the mines—than good. Since four million men had come forward voluntarily, Simon argued, the extra number who would be obtained by compulsion were not enough to justify the experiment. This attitude led to bitter attacks on him by the Northcliffe Press and other organs of similar opinion. He was mercilessly attacked, not only for his line over conscription, but for all sorts of other offences which his opponents thought they had discovered.

In the end the Cabinet gave way to pressure and conscription was introduced, though married men and Ireland were at first to be excluded. Promptly Simon and the Labour members of the Coalition Ministry resigned, and the Irish

Nationalists, foreseeing that their own country could not long remain immune, went into opposition. The Labour Ministers changed their minds, but not Simon.

The first official notice of his resignation came in answer to a question in the House on January 4, when Mr. Asquith said, "My right hon. friend the Home Secretary has, to my great regret, resigned. The matter will be dealt with to-morrow." Next day the Prime Minister introduced the Military Service (No. 2) Bill, the main purpose of which was conscription. After he had spoken, Simon rose to explain his resignation. He began :

In time of war, and most of all in the crisis of the greatest War of all time, the choice that faces a Minister who finds himself divided on a matter of fundamental principle from his chief is a difficult and a painful one. Whatever be the course which he ought to take, he, at any rate, should remember that, however difficult and painful his part may be, personal differences, like, indeed, close personal attachments, are of small importance and of no public importance as compared with the supreme necessity of vindicating in the way he thinks best the need of the country in the hour of its crisis.

I do not rise in order to make a personal explanation or delay the House on any personal grounds. I have made my choice, and all I would ask leave to say is this, that difficult and painful as separation would in any case be, it is for me made far more difficult and far more painful because I owe to the Prime Minister all that help and encouragement could ever give to a younger man, and every opportunity I have enjoyed in Parliamentary life.

The Bill, he said, was recommended on two grounds: first, that it was the simplest way to increase the strength of the nation in its hour of need; and, secondly, because it was the supposed fulfilment of a pledge by the Prime Minister in the House on November 2 that married men should not be called on to serve while younger and unmarried men were holding

back. But surely, Simon maintained, the central feature of that speech by Mr. Asquith, apart from the pledge, was that compulsion could only be resorted to as a practical matter with something in the nature of general consent. It might be asked why he had not resigned in November; the answer could be given in a sentence, "I understood the Prime Minister, in terms, to deprecate coming to a decision until it was possible to arrive at the accurate results of the Derby appeal" for volunteers. And, indeed, the Prime Minister had said that he was confident that Lord Derby's appeal would be wholly successful.

The point, then, was whether the Derby appeal had succeeded or failed, and Simon went into a long argument about figures quoted in Lord Derby's recent report, though "Let me say at once that if the Prime Minister or anybody else could come here and show that the contention I am making is some mere fine-split or fine-spun point, I quite agree that the situation might be regarded in substance as different." He was able to show that the Press figure of a million "slackers" was ridiculously wide of the mark, and that Lord Derby's reference to 650,000 "unmarried men unaccounted for" was the vaguest of guesses. One by one he described various classes of men who had probably been reckoned in that figure, but who for various reasons could never be called up to serve. Moreover, there was the point that, as more and more men enlisted, the physical quality of the remainder dropped while their economic importance rose. He offered a simple illustration:

Imagine that the complement of a ship is called upon for some special voluntary service. You must leave a certain number of people on board the ship to work it. If, after you have made the first appeal and a great number have come forward, you have had to put ten per cent. back because they must remain to work the ship, do you suppose if you bring the rest by force before your tribunal that only ten per cent. of the rest will be needed to work the ship? The truth is, the nearer you work to the bottom of these figures, the larger these

percentages of exemptions are bound to be. That is obviously true of indispensable persons. It is obviously true of badged and reserved persons, and it is still more true of people who are medically unfit.

Does anybody really suppose that after you have called into the Army by voluntary means, before Lord Derby's scheme, some 3,000,000 men, and then, thanks to Lord Derby's great effort, you have got nearly 3,000,000 more men offering themselves, that when you come to deal with the miserable remnant you will find that the percentage of people medically unfit will remain as before?

The House had been promised that, before conscription was introduced, the full facts would be ascertained. "I make no assertion and no prophecy, but I say that no man who will examine this figure of 600,000, as I have suggested it should be examined, can possibly be so bold and hardy as to assert that, after it has been thus dealt with, you will find yourself left with more than a negligible number."

The Bill proposed to legislate first and investigate afterwards, Simon complained. Even though its results might prove negligible, nevertheless the principle of compulsion would have been introduced. "If you are going to sell your birthright, at any rate make sure first that the mess of pottage you are likely to get will provide you with a square meal." And he concluded:

Do not condemn your fellow-countrymen unheard. Do not tell the enemy without warrant that there are hundreds of thousands of free men in this country who refuse to fight for freedom. Do not pay Prussian militarism the compliment of imitating the most hateful of its institutions. Do not refuse to investigate because *The Times* newspaper wants the principle of compulsion given legislative sanction before the House of Lords has to deal with the Parliament Amending Bill. At least investigate what the facts are before you profess to act upon them. If you will do so I still believe, and there are many of my fellow-countrymen who believe, that



FIRST COALITION CABINET, 1915

Left to Right: Arthur Henderson (President of the Board of Education), Austen Chamberlain (Secretary of State for India), McKinnon Wood (Secretary for Scotland), Winston S. Churchill (Chancellor of the Duchy of Lancaster), Bonar Law (Secretary of State for the Colonies), Lord Kitchener (Secretary of State for War), Mr. Asquith (Prime Minister and First Lord of the Treasury), Lord Curzon (Lord President of the Council), Lloyd George (Minister of Munitions), Lewis Harcourt (First Commissioner of Works), Reginald McKenna (Chancellor of the Exchequer), Sir Stanley Buckmaster (Lord Chancellor), Sir Edward Grey (Foreign Secretary), Sir John Simon (Home Secretary), A. J. Balfour (Admiralty), Walter Runciman (President of the Board of Trade), Augustine Birrell (Chief Secretary for Ireland), Sir Edward Carson (Minister without portfolio), Lord Lansdowne (Minister without portfolio), Lord Curzon (Minister without portfolio).

the result will not be to show the bankruptcy of the voluntary system to justify afresh our attachment to a national institution by which alone the nation can be kept united.

He sat down, and John Hodge, the steel-smelter M.P. for Gorton, who was shortly to become Minister for Labour in Mr. Lloyd George's first Ministry, opened the next speech with the remark that he had never heard a more destructive criticism of any Bill than was contained in Simon's remarks; other speakers echoed this opinion. It was left for Sir Arthur Griffith-Boscawen (who, as I showed in a recent book,* might well have been Prime Minister to-day in succession to Mr. Baldwin except for a stroke of bad luck in his constituency) to say that "to listen to the ex-Home Secretary's speech, one would really wonder if there was a war at all. I do not think he ever alluded to it." Sir Arthur had that sort of mind.

Simon spoke again a week later on the second reading of the Bill, and again set out his arguments against it. "We oppose this Bill on grounds of principle and on grounds of expediency. . . . Explain it as you may, there are people, a great number of serious, sober and patriotic people in this country who will hold that, by passing this Bill, we have really lost one of the great national possessions which we entered into this war to defend." And finally:

Do not let it be said that those of us who feel impelled to take this view have failed to keep our eyes on the object, which is to strike down Germany and destroy the evil influences which have made it a menace to the world. It is because I am convinced that you are not going to make this country stronger for that righteous purpose, but split and divide it by proposals like these, that for my part I am compelled to resist this Bill.

Mr. Asquith followed, remarking that it was "an unwonted and unwelcome task" to find himself opposed to

* *Stanley Baldwin, Man or Miracle?*

Simon; and the Bill duly received its second reading by 431 votes against thirty-nine, Simon, John Burns, Ramsay MacDonald, Philip Snowden, and J. H. Thomas being conspicuous members of the minority. The last-named, by the way, has lately published* the letter which he had sent to the Prime Minister on August 20, 1915, to the effect that the result of introducing conscription would be "disastrous" among the Trade Unions. He was certainly mistaken, but the letter shows that Simon had a much better case than many people supposed.

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Though freed from the cares of office, Simon continued to be a diligent Member of the House of Commons and was used by the Government on various occasions, as, for example, when he was set in charge of the enquiry into the motiveless shooting of Sheehy-Skeffington, the Irish publicist, by an Army officer during the troubles in Ireland.

At the same time he returned to the Bar about a month after his resignation with a brief, marked at £7,000, in a dry case between the Law Guarantee Trust and Accident Society and the Law, Accident and Insurance Society. At forty-two he was over military age, and there was nothing to hinder his again taking up the enormous private practice which he had relinquished nearly six years before when he became Solicitor-General. He did so reluctantly, however, though his clients did not suffer. Before many months passed he threw up a practice which was enviously estimated to be worth at least £25,000 a year and went out to France.

He was gazetted as a temporary Major. When the appointment was published, two members of the House of Commons, the Liberal Mr. J. M. Hogge and the Conservative Major Hunt, questioned the Under-Secretary for War; they wished to know why Simon, without any previous fighting experience, had been made a Major. Mr. Ian Macpherson (the late Lord Strathcarron) replied firmly, "I do not know whether he has done any service before, but the Army Council would have been ill-advised to refuse the services of

* In his autobiography, *My Story* (Hutchinson, 1937).

a conspicuously able member of this House when he was prepared to offer them in this self-sacrificing way."

Nobody until now—Simon least of all—has made public anything about his work in France. But Marshal of the Royal Air Force Lord Trenchard has informed me that in the autumn of 1917, when he was commanding the Royal Air Force overseas, he was sent for one day by General Haig, the Commander-in-Chief, who told him that Simon was trying to get into the trenches as a yeomanry officer. "We can't let a man with all his qualifications and his capacity for administrative work go into the trenches," said Haig; "surely you could use him on your staff? You're always asking for staff officers of exceptional capacity." Trenchard was far from keen to accept this proposal; politicians, especially those with a Radical background, were not popular with any branch of the Services. Haig insisted, Trenchard reluctantly obeyed, and Simon was duly attached to the latter's staff as a junior intelligence officer. His commander found him very different from the mental picture he had formed, and soon realised that he had acquired a valuable assistant. Besides having command in the field, Lord Trenchard had the duty of purchasing all sorts of supplies and materials for the Air Force from French manufacturers in Paris. This side of his work had always given him considerable anxiety. He was inspired to give Simon the job of looking into it, a task of considerable detail and difficulty which required tact, a good knowledge of French and a very clear head. "In a very short time," Lord Trenchard has told me, "Simon had the whole business at his fingers' ends and I never had any more anxiety in that direction. He didn't stay in Paris, of course, but came back and continued his ordinary intelligence work at my headquarters. From having been against him, I felt that he was a tremendous help to me in his quiet way. When I was brought back to London to take up a new job, I took him with me, but he begged to be allowed to go back to France. 'I didn't join up to be a staff officer in London,' he said to me." Simon got his way before the German push of March, 1918.

When Lord Trenchard's difficulties with the Air Ministry led to the offer of his resignation and a debate in the House of

Commons in April, 1918, Simon spoke in the debate. "I ordered him, begged him not to," Lord Trenchard says. "I told him that it wouldn't do me a ha'porth of good and would do him untold harm, but nothing I said made any difference. 'I couldn't look an airman in the face again,' Simon answered me, 'if I didn't go down to the House and tell the truth.'"

The debate was opened by Mr. Pringle, the Liberal Member for North-West Lanarkshire and a determined critic of the Government, and was continued by Lord Hugh Cecil with equal vigour. Mr. Lloyd George, the Prime Minister, made a curious speech, in which he praised Lord Trenchard to the skies for most things, but declared that he had not been a successful Chief of the Air Staff; the Prime Minister managed also to obscure the main object of the debate by deprecating the intervention of serving Members like Lord Hugh Cecil and Simon. The last-named, however, refused to be silenced, claiming that "I could not discharge the duty which lies upon me as a Member of this House if I sat silent throughout this debate and did not endeavour to indicate to the House what I certainly must observe is very necessary that the House should know." This was, briefly, that the Air Force, being a new body, depended more than any other of the Services on such factors as the confidence which its young men felt in their leader, Lord Trenchard. The latter has always maintained that Simon's loyal outburst on behalf of one who had been his commander for a short time is characteristic of him.

CHAPTER EIGHT

HIS last case before he went to France was at the Old Bailey. Lieutenant Douglas Malcolm was charged there in September, 1917, with the murder of Anton Baumberg, a Polish Jew, who went by the name of "Count de Borch." Mr. Justice McCardie presided, Sir Richard Muir prosecuted, Sir Edward Marshall Hall held a watching brief for an interested party, and Simon appeared for the prisoner.

The circumstances, as outlined by Muir and his witnesses, seemed clear enough. Malcolm, a partner in a prosperous City of London firm, had married in June, 1914; within three days of the outbreak of the War—only two months later—he had joined the Army, and he was sent to Egypt and then to France. During his absence his wife made the acquaintance of a young foreigner who posed as a Russian nobleman and had a coronet marked on his gold-mounted umbrella and other possessions; in point of fact, the "Count de Borch" was an adventurer who had eked out a living as a translator in various West End firms, and who, for all his apparent affluence in public, lived in a top-floor back room in Bayswater. It was alleged that he was a "white slaver," a black-mailer and even a spy—apparently a woman with whom he had associated was charged with some such offence in France—but no sort of proof of this was presented; on the contrary, there was evidence that he had joined the Royal Horse Artillery as a cadet, but had been refused a commission and dismissed from the Army on the ground that he had made false statements about himself. He was certainly an undesirable character, probably an early specimen of that now familiar type, the gigolo.

In July, 1917, Mrs. Malcolm, Borch (as he was called at the trial) and a woman friend of the former went down to New Milton in Hampshire; a day or two later Malcolm returned unexpectedly to England, found his wife absent from their house and went to New Milton, where, shocked at

Borch's apparent intimacy with his wife, he knocked him down, obtained a promise from him not to see her again, and took her back to London. On the way he sent Borch a note from the railway station challenging him to fight a duel; Borch did not answer. Malcolm also obtained a promise from his wife that she would not try to see the "Count" again. Before returning to France at the end of the month the husband sent Borch another challenge, suggesting that the latter should cross to France, where duelling is not treated as a criminal offence, as it is in England. Again there was no reply.

So soon as Malcolm had left, however, Borch and Mrs. Malcolm met again, and she wrote to her husband begging him to let her go and live with the "Count." Malcolm at once wrote to him, "If I ever hear of you trying to see or even talk to my wife again, wherever I am I will get leave and hunt you out and give you such a thrashing that even your own mother will not know you again. I will thrash you until I have maimed you for life. This I swear before God in whom I believe, and He is my witness." About this time Borch bought a revolver, which he showed to Mrs. Malcolm and her woman friend, saying that he wanted it in case Malcolm attacked him.

As well as writing to him, Malcolm took steps to obtain special leave, and at midday on Saturday, August 11, he was back in London, where he learned that his wife had given the servants notice and had bought a new travelling-trunk without any initials on it. Suspecting the worst, Malcolm telegraphed to her mother to come at once; his wife returned late in the evening and Malcolm discovered during the week-end that Borch's address for letters—for the "Count" did not care to disclose that he was living in circumstances beneath his assumed rank—was a club in Grafton Street. On the Monday morning, Malcolm saw its secretary, a Mr. Oliver, who, though unable to give Borch's real address, offered to accompany Malcolm to Scotland Yard to make enquiries. There they learned that the man's title was bogus and that he was regarded with some suspicion by the police. When they left, Malcolm asked the secretary if the latter

thought it would be any good to offer Borch five thousand pounds to leave the country; but Mr. Oliver prudently remarked that, if Borch were indeed a blackmailer, this would be just what he would like. Eventually Malcolm found the address where Borch lodged, bought a horsewhip and called there. The landlady said that the "Count" was out, and Malcolm went away.

Next morning he wrote a letter to his wife, whom he addressed as "Very dear, very own darling Dorothy," and told her that he had discovered Borch to be "the most unutterable blackguard ever born. . . . I am going to thrash him until he is unrecognisable. I may shoot him if he has got a gun. I expect he has, as he is too much of a coward to stand a thrashing. If the inevitable has got to happen, I may get it in the neck first. . . . I believe in God. . . . I thank Him from the bottom of my heart for having sent me over in time to save you from the devil incarnate."

He also made a will, on the special form then available for soldiers on service, leaving all his property to his wife's mother. Putting the letter and his revolver in his pocket—he wore mufti on this occasion—he took the whip and went again to the address in Bayswater. He now told the cook that he was an inspector from Scotland Yard and wished to be shown up to the "Count's" room. She took him there and he entered the room, where he found Borch in bed, wearing only a pyjama jacket.

As the cook went downstairs she heard a noise; another person in the house said she heard sounds, as if of a struggle, which lasted for some time. Then a revolver was fired four times; Borch was killed, and Malcolm himself fetched the police and handed over the revolver with which he had killed him. When he was charged at the police-station he said, "Very well; I did it for my honour. . . . I went there to thrash him." It was noticed that a drawer at the other side of the room from the bed was half-open; it contained Borch's revolver in a holster, a tie-pin and a tie. At the inquest on Borch the jury, presumably moved by sentiment rather than reasons of fact, returned a verdict of "justifiable homicide in self-defence." Malcolm was, however, brought before the

Marylebone magistrate, who with an open expression of regret committed him for trial at the Old Bailey.

Sir Richard Muir, having set out what had happened, added that the jury would realise that it was difficult, even for the advocate for the prosecution, to avoid giving the story a colour which was in favour of the prisoner. But their duty, he warned them, was to administer the law as it exists and to decide on the facts in a calm and dispassionate manner. It would be for Simon, he continued, whose great ability they would all rejoice to find at Malcolm's service, to make submissions of law in his turn. Muir intended this, of course, to put the jury on their guard against being carried away by human sympathy with Malcolm, and also to rule out any question of the "unwritten law" which in some countries, but not in England, is supposed to justify a husband in killing a man whom he suspects of designs on his wife.

Muir then set out the legal position as follows: All homicide in such circumstances—and Malcolm had admittedly killed Borch—is presumed in this country to be murder until evidence proves the contrary; but it might be shown to be manslaughter if the criminal was provoked to it by such provocation as the law recognised as sufficient. (Such as, interrupted Mr. Justice McCardie, who always liked to show himself well posted in precedents, "a sudden admission by a wife of adultery." Muir replied quickly that he did not intend to omit dealing with this.) Counsel went on to argue that Malcolm, on entering the room, had acted calmly and deliberately; and he ended by asserting that there was no evidence on which the jury could reduce the charge from murder. There was no evidence of assault on Malcolm by Borch, and no suggestion that the former had been irresistibly provoked to murder by any admission of adultery on the part of his wife; indeed, Malcolm had always asserted that he did not believe that his wife had committed adultery with the dead man.

The witnesses for the prosecution then gave evidence, which bore out what has been summarised above. In cross-examination Simon elicited from a police inspector, who had known Borch, that many letters from women were discovered

among his effects, as well as articles bearing the bogus coronet. And, recognising the distaste which this witness evidently had for Borch, Simon said, "If you can say anything in the man's favour, pray do so now!" "He was a bad character," the policeman answered.

On the second day of the trial witnesses were recalled to say whether any marks of violence had been found on Malcolm—if there had been, it would have helped to suggest that he acted in self-defence—and whether he had complained, on arrest, that Borch had assaulted him. The witnesses agreed that there were no marks and no complaints. But Simon had an inspiration and, when Sir Bernard Spilsbury was recalled, he asked him, "Were there any marks of violence on Borch's body?" "No," said the doctor, whereupon Simon suggested that a blow struck very shortly before death might leave no trace. "Possibly," the witness admitted, and Simon was satisfied that he could now argue that, whatever had happened afterwards, his client had started to execute the assault with the whip.

He did not put Malcolm in the witness-box, a seemingly risky manœuvre, for, ever since prisoners have been privileged to give evidence on their own behalf, omission to do so has come to be regarded as a point against them. Though the prosecution is not allowed to draw attention to such an omission, the Judge may do so, and almost invariably does. He did so in this case.

Muir now summed up the case for the prosecution. He began by paying Simon compliments; he was the most skilful advocate of the day, and so on. Therefore the jury could take it for granted that whatever human skill could do for the prisoner Simon would do. In Muir's submission, however, the only way in which Malcolm could escape conviction for murder was by claiming that Borch had, in the room where he died, provoked Malcolm to such an extent that the latter acted under the influence of uncontrollable passion. This would involve a verdict of manslaughter. But the only possible provocation of such a nature would be that Borch had struck him a severe blow. What evidence existed of this? It might be said (Muir continued) that Malcolm

was seeking to prevent Borch from reaching the pistol in the drawer, but the jury could not act on conjecture about this or similar possibilities; they must have evidence! And he ended by asking sympathy for himself in his painful duty: "A man would be less than human if he did not sympathise with all his manhood for a man like the prisoner trying to defend his wife against a scoundrel." This from Muir, who as a rule was a most determined prosecutor, shows the extent to which natural sympathy with the prisoner had entered every side of the proceedings.

Despite this, however, Simon's task was peculiarly difficult. Inasmuch as the law declares that homicide is murder unless evidence is produced to show that it is not, and inasmuch as he had called no witnesses, not even the prisoner—who alone could have told the court what happened in the room—to shift the *prima facie* presumption of murder, he had no legal ammunition. Everything depended on the effect of his eloquence on the jury. He certainly had sentiment on his side, but he was bound to rule out any appeal to the "unwritten law." He was left, therefore, with only one hope—namely, that the jury would accept his conjecture about what had happened and acquit his client of the murder charge; as we shall see, he went further and demanded an acquittal from the charge of manslaughter as well as the graver one. He used all his histrionic ability—and it is only natural that a successful advocate should be an instinctive actor—to impress the jury. He began by speaking very slowly, with long pauses and in a very quiet manner; then, as his argument gathered weight, he alternately raised and lowered his voice, turned dramatically towards Malcolm, and used more and more gestures to emphasise his points. The jury followed him as if he had hypnotised them.

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Throughout his long speech two lines of argument were interwoven: the suggestion that Malcolm had killed Borch without premeditation and in self-defence, and a constant and skilful appeal to the sympathies of the jury. From the

beginning he repudiated any intention of appealing to the "unwritten law." "I make no appeal to it; I do not require to do so; it would be contrary to my duty to do so; it would be contrary to your duty if you listened to me when I attempted to do so. This is a court of justice, and you are sworn to do justice; and it is justice, justice according to law, which I stand here to ask you to mete out to Lieutenant Malcolm." And this, he told them, would mean that Malcolm was guilty of no crime, that all his actions from first to last were without stain and without reproach, and that he had shot Borch only in self-defence, admittedly "while defending the honour of his wife, which was dearer to him than his life."

Simon did not hesitate, however, to tell the jury what he might have urged on them *if* he had been willing to advance something like the "unwritten law" on his client's behalf. It is extremely interesting to see how, all through his speech, he welded together the defence he was making and the defence he was not making. Examining it in cold blood, one can distinguish the two threads clearly enough, but it must have been very difficult for the jury to separate them.

Thus, immediately after his repudiation of any appeal to matters outside the law, he assured the jury that he did not know of any decision by which lawyers had ever been able to reconcile "the undoubted duty of abstaining from taking the life of another human being" with "one of the highest and most important duties that a man can owe, the duty which is enshrined in our Marriage Service when he marries his wife." To what specific duty mentioned in the Marriage Service he referred Simon did not state,* but he explained that—

In the ordinary experience of mankind, a husband who finds unhappily that the wife to whom he has been loving and faithful is being tempted by some would-be seducer has a method of discharging his duties which

* Possibly his explanation which follows may be regarded as an interpretation of the words "to have and to hold . . . to love and to cherish."

involves none of these awful questions of life and death; he discharges his duty by remaining with his wife; he discharges his duty in case of need by urging her to come away with him. It is the poignant tragedy of this case that Lieutenant Malcolm, with that duty of protecting his wife on him, was, by the call of the only other duty that he could recognise as overriding it, compelled to leave his wife here in this country, and found himself unable to stay with her and unable to take her with him to a place of safety. . . .

I should not be prepared to subscribe to the doctrine that the duty of protecting the woman to whom you owe all is thereupon dissolved on the supposed ground that there is no other course which the law of this country . . . prescribes but that a husband should retire and leave his wife to her fate. But, gentlemen, that is not the defence which I place before you here.

The real defence, he went on to say, was that Malcolm "took the life of Anton Borch because he was compelled to take this course in his defence in the crisis of a struggle."

After this he recapitulated the facts of the marriage and of Borch's intrusion into it, with natural emphasis on Malcolm's patriotism and the "Count de Borch's" dubious way of life. He pointed out that, when provocation to murder Borch had been greatest—namely, when Malcolm first discovered him with his wife—he did not attempt to kill him, but, instead, thrashed him "in the good old British way." Moreover, Simon dismissed the suggestion that Malcolm's reason for shooting the other man was that he had discovered the wife's unfaithfulness:

My learned friend [Muir] reminded you of the declaration, chivalrous and ardent, as is everything which marks the attitude of Lieutenant Malcolm towards his wife, which the accused made when he was brought before the magistrate. He spoke of a false and scurrilous slander. And I say here on his behalf that, if the setting up of that slander, if the urging of that hypothesis was

the means by which he should be acquitted, then let him be condemned!

Now, the law lays down that, while a man may perhaps be naturally provoked to homicide at the instant of discovering his wife's adultery, this excuse is unacceptable if sufficient time has elapsed to allow the husband to regain his senses; this loophole, therefore, was not open to the defence, and Simon, in discarding it and using this gesture as an illustration of his client's nobility, was abandoning nothing which could help Malcolm.

Again, after indicating a line of defence which he did *not* mean to follow, Simon indicated his real argument:

So far from the history of his actions showing a murderous intent, he exhausted every means, he restrained himself in every way; and it was only when that which Borch had threatened [to shoot Malcolm, as we shall see] was found to be a reality, and the struggle in that little room became a case of Borch's life or his own, that he did what he was justified in doing and used his pistol.

The court was about to adjourn for an hour, and Simon, breaking off his speech had the inspiration to ask the jury to consider during the pause "What should Lieutenant Malcolm have done? What has he left undone that he should have done? What has he done which he should be condemned for doing?" This meant in effect, "What would *you* have done in his place?" A solemn luncheon-time reflection for the jury!

After the adjournment Simon returned to an examination of the evidence. He again made the telling point that, during the whole of his first leave, Malcolm made no attempt to look for Borch and injure him; the challenge to a duel was intended, in view of his contempt for the other man's personal courage, to keep him at a distance. So it could not be suggested that Malcolm at this time was meditating murder. Even when he received his wife's letter begging him to let her go away with Borch, Malcolm only wrote a letter to him threatening him with another thrashing. But

then Borch bought a revolver and told the women that he had bought it in case he were attacked by Malcolm. "Now, down to that moment," said Simon impressively, "you cannot point to a single word or a single deed of Lieutenant Malcolm's which had any connection with the taking of Borch's life, or any possible relation to it."

He described how Malcolm, coming again on leave to London, found in his house what seemed clear proof that his wife was about to leave him for Borch, and how the unhappy man, "with tears in his eyes," left Scotland Yard and, far from having murder in his thoughts, actually discussed trying to buy Borch off. Being dissuaded from this by Mr. Oliver, the club secretary, "What is there left for Lieutenant Malcolm to do?" He could not stay with his wife, because he must go back to the Front; nor could he take her with him. Simon referred to the Scotland Yard suggestion that Borch was a White Slaver, and hinted that he might have had professional designs on Mrs. Malcolm; but he prudently did not labour this point. Instead he recalled a later conversation with the club secretary when Malcolm exhibited the whip he had bought and intended to use on Borch. "Is that murder? Is that homicide?" He reminded the jury that, after the first unsuccessful visit to Bayswater, Malcolm remembered—"He knows, you may be sure, for his wife knows"—that Borch had bought a revolver for possible use against him. Until this time Malcolm had never taken a revolver with him and he had never mentioned it in his letters to Borch or in his conversation with the club secretary; but, remembering Borch's purchase, he put his own revolver in his pocket on his next visit to the "Count's" lodgings. "Can any human being say that he was wrong to take it?" Simon demanded. "I will not delay you by arguing so plain a proposition."

He dropped his voice when he described how Malcolm had presented himself at the house in Bayswater as a police officer—a very reasonable thing to do, since Borch would by now be aware that he had called there in uniform the previous day; and how he was taken upstairs by the cook. Then Simon drew special attention to the cook's statement

that, though she had heard a noise as she went downstairs, there was no sound of firing. (He emphasised this, as we can now see, in order to lead up to the submission that his client had first attempted to whip Borch and had only drawn his revolver as events progressed.) What happened when Malcolm entered the room?

The door is opened. "Inspector Quinn" enters. It is Malcolm! Lieutenant Malcolm, who had exhausted his leave only a fortnight before, who is safely tucked away in France, fighting not only for his own country, but for Borch's too, back from the Front in defiance of all experience of military regulations! And, what is more, he has found Borch out in this city of five million people, a man whose address was not known to the secretary of his club, was not known to Mrs. Brett [Mrs. Malcolm's friend], and was not known to the ladies whose correspondence was found in his drawer, for the letters were addressed to Grafton Street. He has found him out in this great city, and there he is entering his bedroom door. That is indeed the footstep of Destiny:

Her step may halt, but seldom leaves
The wretch whose guilty track she hounds.

And what then happens? Shooting? Murder? Not at all. I submit to you that it is as plain as any inference reasonably drawn from plain facts in a court of justice ever can be that Lieutenant Malcolm entered that room with that whip for the purpose of giving the man the flogging which he said he would give him, which he had warned him from France he would give him, which Mr. Oliver advised him to give him, and which he had told Mr. Oliver he would give him. What did he take a whip for else? People bent on using revolvers do not want whips. Borch had not got a whip. *What is the good of a whip if you are determined to use a revolver?*

After this dramatic reversal of the rôles of the two men, Simon proceeded in gentle tones to ask the jury to accept a second inference:

I address it not to your sympathy or to your passion, but to your judgment. I submit that it can be inferred with reasonable certainty that the drawer which, as you now know, contained this pistol which Borch had bought for the purpose of using against Malcolm if he attempted to touch him was opened *after*, and not *before*, Malcolm entered the room. I will tell you why I say so.

This reason was that, since the drawer contained nothing but the revolver, a tie, and a tie-pin, there was nothing in it which Borch, clad as he was only in a pyjama jacket, could possibly want to take from it except the revolver. If he had wanted the protection of the revolver while he slept, he would have kept it under his pillow or on the chair which (as Simon had elicited from a police witness) was beside the bed. "The revolver was not lying there, and for the best of all reasons: if Lieutenant Malcolm is away in France, it is no doubt a very good thing to be provided with a revolver in case of ultimate need, but then you are not likely to need it until he comes back, and I submit to you that the inference is . . . that the drawer was opened after Borch discovered to his horror that the man who had come into his room was none other than the husband of Mrs. Malcolm." If this were the case, Simon explained, it led irresistibly to "a fact of the most stupendous importance." The revolver lay in the drawer where it might be reached in an instant by dropping one's hand on it. "Another instant and it would have been in the man's hands." So the fact that (as the cook and another occupant of the house had stated) there had been a struggle for an appreciable time, together with the fact that Borch had not succeeded in getting his revolver, utterly disproved any suggestion that Malcolm had entered the room "with his pistol all ready to fire and, the moment he has got a clear view of his enemy, wreaks his vengeance upon him." In the course of the struggle, however, Borch had eventually reached the chest of drawers.

Is it not also perfectly certain that if he had been allowed one moment in which he could, in fact, possess himself of his weapon, he would have used it, as he had

vowed he would use it if a finger was laid upon him by Lieutenant Malcolm? And, as was pointed out, I think in answer to a question from my Lord, it might have been used even without actually taking off the leather cover which contained it.

With the very little factual material at his disposal, Simon could not afford to leave out anything which might be turned to his client's advantage. So he reminded the jury of the other lodger's evidence about the noises she heard in the room before the shooting, which were consistent with those of a whip striking a brass bed-rail. "Now, gentlemen, that is a fact of vast importance," and, besides, there was evidence that the whip was afterwards seen to be, as the witness described it, "gathered up and hanging loosely." Both these pieces of evidence, Simon argued, confirmed the supposition that the whip had been used; and he then introduced the admission he had got from Sir Bernard Spilsbury that the absence of marks on Borch's body did not rule out the possibility that he had, in fact, been struck by the whip. Therefore:

It being abundantly clear that a struggle was going on; it being proved before you that Borch was a man who had bought and exhibited a formidable weapon by which he had vowed he would defend himself; it being proved that the drawer was open and the weapon lying in it, although the moment happily never arose when Borch was actually able to succeed in getting it in his hand—is not the conclusion that follows irresistible and overwhelming?

This conclusion, Simon proclaimed, was, first, that Malcolm did not enter the room to murder but to chastise the other man; secondly, that Borch made desperate efforts to reach the revolver and so save his skin; thirdly, that he was within an ace of success; and, fourthly, that

unless at that moment Lieutenant Malcolm was to hold up his hands and retreat as the result of this ruffian's threat, he was driven in the heat and impulse of that

struggle—not as part of the purpose for which he entered the room, but as a necessary consequence of what occurred in the room—then and there in a moment of time to use the revolver with which he had so prudently provided himself, knowing (as he must have known, as he said in the letter to his wife) that the other man was likely to be armed.*

And Simon went on more calmly to argue that the speed and the direction in which the shots were fired showed that they had been fired hastily and without deliberate aim, and that the other man was in rapid movement.

He then passed to the will which Malcolm had made before going out that morning. It showed, Simon said, that Malcolm knew that he might be faced by a man who would kill him, and therefore he had left his property to his wife's mother as the only person who would have been left to protect Mrs. Malcolm. As for the letter to his wife, "It will long remain in the annals of this court, annals which so often contain chapters of pathos and of tragedy, as a noble monument of what a chivalrous man may say to his wife when he may be facing death to defend her." Also, he pointed out, it contained the important statement that Borch had probably got a gun.

Then Simon summed up his case. His client, he said, had committed no crime, neither murder nor manslaughter:

Neither do I ask you to compromise with the facts of this case by embellishing a condemnation at your hands with recommendations to mercy. Lieutenant Malcolm is in no need of mercy. Gentlemen, I have endeavoured to show you by an examination and analysis of the testimony in this case that Lieutenant Malcolm at every stage was justified in what he did, and that, far from being guilty of the murder of a defenceless man, he exhausted every effort and only at last used his pistol when he was in instant danger of having a similar weapon turned against himself.

* Legally speaking, Malcolm should have retreated, for self-defence is only justified if there is "no other means of resistance and no way of escape."

All his client's actions which had been traced up to the moment of his arrival at the house showed that his intention had been to chastise and not to kill the other. "The prolonged struggle, the intervals that elapsed before any shot was fired, the sounds and the appearance of disorder, the open drawer with Borch's pistol lying conveniently within it, all confirm and prove that contention."

Raising his voice now as he began his peroration, he demanded from the jury a "verdict of innocence" for his client; in other words, total acquittal.

A way is open to you, indicated, justified, authorised by the law itself, which leads to the only conclusion which could respond to the promptings of your hearts. The way is open to you, and I ask you to take it. Let that man among you who is prepared openly to avow that in like circumstances he would not wish to show the courage and the chivalry of Douglas Malcolm cast the first stone. No, gentlemen, rather let us, who are the actors in the last scene of this tragedy, help to restore this unhappy wife to her faithful husband by showing her that he is a champion of whom she may well be proud.

I am not asking you to disregard your oaths, or to set at naught the law under which we live. But law is the servant and not the master of the community. It exists to foster and preserve what is brave and noble, to be a terror to evildoers, and a shield to such as do well. And it is the peculiar glory of our English law that in these dread matters of life and death it leaves the final decision, not to the pedantic application of some written code, not even to the learning and impartiality of our judges, but to the sense of justice and the sense of duty of twelve citizens chosen by lot to represent the community as a whole, relying upon them that they will preserve and that they will apply that law which is the foundation of all our liberties.

Then he paused; turning for the last time towards the prisoner, he ended in quiet tones:

Gentlemen, Lieutenant Malcolm is here before you in the clothes of a civilian. It is for you to say—for the great and final responsibility is yours—whether he shall pass from this place to the condemned cell to put on the shameful garments of the gaol, or whether, in the words of the jurymen's oath, you who have sworn to make "true deliverance between our Sovereign Lord the King and the prisoner at the bar" will return him to the service of His Majesty and bid him put on again the uniform which he has done nothing to disgrace and so much to justify.

Douglas Malcolm awaits your verdict with a quiet mind, conscious that whatever that verdict may be he has protected his nearest and dearest, confident that

Whatever record leaps to light
He never shall be shamed.

As Simon sat down, there was wild cheering from the back of the court. So absorbed was he with his argument, and so exhausted by his effort, that he did not hear it, and to this day he doubts the evidence of others present and the newspapers.

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Mr. Justice McCardie summed up. The jury, he said, must pay no attention to "unwritten law." It was true that, if a husband suddenly discovered his wife in the very act of adultery and killed her or the man, then a jury might legally find that the provocation was such that the homicide ceased to be murder and became manslaughter; but, if a husband learned indirectly of his wife's unfaithfulness and deliberately hunted out her lover and killed him, then by English law he was guilty of murder. "I desire to say in clear and unmistakable terms that this so-called 'unwritten law' does not exist in England. . . . It is opposed to the most elementary principles of British justice—namely, open trial and unbiassed adjudication." A husband in this country, he went on, has no property in the body of his wife. He may not imprison her or chastise her or force her to live with him; "she is mistress of her own physical destiny." If

she sins and the husband can find evidence, he can obtain a divorce; but, if she decides to give her body to another, the husband may not murder the lover either to punish or to correct the offence. The Judge exhorted the jury to carry out the law, for the law was more important than the "temporary indulgence of natural temper"; and he made this exhortation more palatable to them by a reminder that the Crown has the right, in the case of an adverse verdict, to administer mercy no less than justice.

After these generalisations, he summarised the facts of the case once more and offered some observations on them. For example, the dead man's bad character, he said, could not justify murder. If, however, the jury thought that Malcolm had fired in self-defence, then they should acquit him. The Judge then took up one of the main items in Simon's argument and agreed that it was greatly in the prisoner's favour that he had not at any time threatened to take Borch's life. He added that it was clear that Borch would have used his pistol had he been able to do so; it was loaded and lay in an open drawer not far from the bed, a drawer which, as Simon had said, could not have been opened for the sake of its other contents.

But—and here the Judge's voice took on a sterner note—only one man now living could state what had really happened in the room. This man had not gone into the witness-box to give evidence. Why not? The prisoner had offered no testimony but had left Simon to ask the jury to conjecture things which, if he had given evidence, could have been proved one way or another. As a result, there was no evidence before the court that Borch had, in fact, tried to reach the pistol; no evidence that he had threatened on this occasion to use it; no evidence that it was in the room at the time! Nor was there any evidence that Malcolm had shown any mark or sign of the struggle which, according to the defence, had taken place before the shooting. There was nothing but conjecture on all these points, and the jury's duty was to deal with facts, not with inferences. And among these facts they should consider that Borch was a man of poor physique whom Malcolm had already once overpowered

at New Milton and whom he was probably able to overpower again; that Malcolm was dressed and armed, whereas Borch was clad only in a pyjama jacket and had just risen from his bed.

After a further exposition of the law by the Judge, the jury retired. They returned after twenty minutes with a verdict of not guilty of murder. At which there was such a burst of applause among the public that the case was held up for several minutes; the noise spread to the corridors and from there to the streets, where a huge crowd had gathered. Somebody called for three cheers for Malcolm, and these were given. When at last order was restored the jury were asked whether they found Malcolm guilty of manslaughter, and they said that he was not guilty of anything at all.

Which meant that they had unreservedly accepted Simon's argument that Malcolm had shot the "Count de Borch" in self-defence.

CHAPTER NINE

SIMON'S first homecoming after the Malcolm case was on short leave in 1918 to appear in the High Court to defend a former Cabinet colleague against a suit for libel. His client was Sir Charles Hobhouse, M.P. for East Bristol and a former Postmaster-General. The plaintiff, Mr. Godfrey Isaacs, was a brother of another of Simon's former colleagues in the Ministry, Lord Reading, who, when this case was heard, was Lord Chief Justice. Inasmuch as the issue was that either the plaintiff or the defendant was a deliberate liar, considerable tact was needed in the handling of the brief.

The trouble began with a speech made by Sir Charles Hobhouse in the House of Commons on March 19, 1918, in which he suggested that Mr. Isaacs had put forward a statement "wholly false and without foundation" during the hearing of a suit brought by the Marconi Company, of which Mr. Isaacs was the managing director, against the Government. This statement was that Sir Charles, when Postmaster-General, had tried a few months before the outbreak of the War to persuade the German wireless firm, the Telefunken Company, to compete for Government contracts in England against the British Marconi Company. (Readers must remember that, at a time when the country was fighting Germany, any suggestion that a man had had official sympathy with the Germans was considered highly derogatory to his intelligence and his character.) Since speeches in Parliament are privileged and speakers cannot be sued for libel in respect of them, Mr. Isaacs publicly challenged Sir Charles to repeat his remarks outside the House; the latter promptly obliged him by so doing in a letter to the Press and, for full measure, he sent Mr. Isaacs a letter, and published this in the newspapers, in which he elaborated the charge of falsehood. Mr. Isaacs at once issued a writ for libel, and the case came on in July.

Simon's colleagues for the defence were Sir Douglas Hogg, K.C. (now Lord Hailsham), and Mr. Eustace Hills, afterwards a County Court Judge. Mr. Isaacs briefed Sir Leslie Scott, K.C., the present Mr. Justice Hawke, and Mr. Stuart Bevan. Lord Darling was the Judge and, as usual, missed as few opportunities as possible to show his wit and even, as one side alleged, his prejudices.

Opening Mr. Isaacs's case, Sir Leslie Scott explained that an agreement had been made between Marconis and the Government in 1913 whereby a group of long-distance wireless stations were to be erected; three of these were to be set up in any case, while three others were partly conditional on the Government's desiring to continue the contract. At the end of 1914 the Government repudiated the contract in so far as it referred to the three provisional stations and, a year later, Marconis brought an action against them. This did not come into court until March, 1918, when, after Sir Edward Carson had made his opening speech for Marconis, the Government climbed down and submitted to judgment. Having won this victory, Mr. Isaacs authorised a statement to be made which accused Sir Charles of having invited the Telefunken Company in the early part of 1914 to come over to England and compete with Marconis for part of the Government contract and, what was even more sensational, of having admitted to Mr. Isaacs that he (Sir Charles) had acted improperly. Mr. Isaacs claimed that not only was his recollection of his interviews with Sir Charles very clear, but that the Telefunken directors had told him verbally and in writing of Sir Charles's invitation to them.

The first interview in question, according to Mr. Isaacs's story, took place late one night at Sir Charles's house in Rutland Gate. It was in February, 1915, a few weeks after the Government had broken off the contract with Marconis, who were naturally indignant at such treatment. Sir Charles had opened the door to him in person and said, "I want to have a private talk with you as between man and man—Isaacs and Hobhouse. Will you agree that each of us shall be on his word of honour not to make any memorandum of what we shall say to each other to-night?" When Mr. Isaacs

agreed to this request for secrecy, Sir Charles had asked why there was all this bother over the breaking-off of the contract for the additional stations; he had understood that Marconis themselves wished to get out of it. Mr. Isaacs (said his counsel) had denied this and stated that he had begun to distrust the Post Office because of its invitation to Telefunken, proof of which he quoted from a letter from this firm's directors. Whereupon, he said, Sir Charles commented, "Well, I suppose that, as a Minister of the Crown, I was wrong, but I thought at the time that it was right to encourage competition. In this country the feeling against monopolies is so strong." The conversation then became heated and was adjourned till next day, when the two men met at the Royal Automobile Club in Pall Mall and Sir Charles said, "You recognise, I suppose, that you have your foot on my neck. Are you going to crush me, which will mean my leaving the Government, or are you disposed to help me?" Moved by this appeal, Mr. Isaacs had replied that he had no wish to crush anybody and proposed that a fresh contract should be arranged between the Admiralty and Marconis for the three disputed stations and that these should later on be taken over by the Post Office, an arrangement which would solve all the difficulties. Sir Charles had then undertaken to sound the Prime Minister, Mr. Asquith, about this. But unfortunately the negotiations came to nothing and Marconis were obliged after all to go to law.

After this summary of his case by Sir Leslie Scott, Mr. Isaacs went into the witness-box to support it. He explained incidentally that Sir Charles's alleged invitation to the Telefunken firm was not accepted because, owing to various arrangements with Marconis and to matters of licences and patents, the German firm could not possibly have quoted lower prices than its competitors for work in England. But for this, Mr. Isaacs let it be understood, a dangerous situation might have arisen.

Simon began his cross-examination of this witness by going, as usual, to the heart of the issue involved. Had Mr. Isaacs, he asked, ever heard of an occasion in which Sir Charles's word had been found false? Mr. Isaacs replied that he had not.

Having thus established that, even according to the plaintiff, his client was a man of good reputation, Simon asked how Mr. Isaacs could believe that Sir Charles had approached Telefunken when, as Postmaster-General, he was both morally and legally bound to Marconis. The witness answered that it was certainly difficult to imagine Sir Charles taking such a course if he knew of the terms of the Government agreement with Marconis, but possibly he was unaware of them.

Simon now suggested to the witness that Sir Charles's visit to Telefunken, which the Germans were supposed to have described as taking place in the summer of 1914, had really taken place in February of that year—as indeed was widely reported in the newspapers. Mr. Isaacs said that he had taxed Sir Charles with having paid two visits to Berlin, and that the latter had denied the summer one, and the witness had taken his word for it. Simon, however, pressed the point about the number and the time of the visits to Berlin, submitting that, if Sir Charles had really admitted that he made overtures to Telefunken and that his neck was therefore under Mr. Isaacs's foot, there could have been no reason for the two men to dispute about the number and dates of the visits, as the witness said they had done. Whereas, on the other hand, if Sir Charles had *denied* the invitation to Telefunken, then it would have been natural for Mr. Isaacs and him to discuss the dates. And, to cast further doubt on the witness's story, Simon went on to suggest, as Sir Charles had done in his speech in Parliament, that the Telefunken directors' statements to Marconis about his client had been designed by the Germans to stir up trouble in England just before the War.

The next step in the cross-examination was a direct attempt to shake the witness's credit. Simon asked him if he could say of himself, as he had done of Sir Charles, that his word had never been upset; and proceeded to mention a case brought by a Mr. Hamilton against Marconis. Had not the jury then accepted Mr. Hamilton's word in preference to the witness's? Mr. Isaacs refused to acknowledge that the jury had considered the issue in that form, but Simon submitted that, both in that action and in another action brought by

a Mr. Segar, the same question had been considered as was involved in the present case—namely, which of two men was to be believed in the absence of witnesses—and that on each occasion the jury had not accepted Mr. Isaacs's version. After this Simon asked Mr. Isaacs about a memorandum of one of the interviews with him which Sir Charles had made immediately after it, and which bore out Sir Charles's account of what was said. The witness replied that he doubted the genuineness of this document, and had had it photographed and examined by experts on the assumption that it had been written long after the date written on it. The experts, however, had been unable to settle the matter one way or another.

Welcome relief entered the case when Simon asked the witness if he had ever heard of a cultivated English gentleman using such abject language as "You have your foot on my neck." Mr. Isaacs agreed that the expression was unusual and Simon confided to the court that it came from Joshua x. 24.* Sir Douglas Hogg interposed to say, "It was when the sun stood still," but Mr. Justice Darling remarked that he personally had supposed the expression to allude to Roman gladiatorial shows: when one gladiator struck down another, he put his foot on his victim's neck and asked the audience what he should do, to which they replied by holding their thumbs up or down.

After this diversion Simon returned to the attack. He asked Mr. Isaacs whether, as managing director of Marconis, he received a percentage on profits. "Yes," said the witness, replying to another question that the damages awarded to Marconis against the Government might amount to two and a half million pounds, and that this would go to swell the firm's profits.

"Since your percentage of the profits is five per cent.," Simon then said, "the award may bring you personally £125,000?"

* "And it came to pass, when they brought out those kings unto Joshua, that Joshua called for all the men of Israel, and said unto the captain of the men of war which went with him, Come near, put your feet upon the necks of these kings. And they came near, and put their feet upon the necks of them."

Mr. Isaacs answered, "I haven't thought what it will bring me." At which there was unfeeling laughter in the court.

"Do you really mean that?" Simon asked gently.

"I never count my chickens before they are hatched," the witness answered.

Simon then opened the case for the defence by saying bluntly that one of the two men concerned was a liar, and it would be for the jury to say who the liar was. He submitted that, at the end of the case, Mr. Isaacs might leave the court with all his cleverness, but the defendant would go away as an honest man. For one thing, he intended to show that the interview between his client and Mr. Isaacs at Rutland Gate had taken place in September, 1914 (thus, *before* the repudiation of the contract by the Government), and not, as the plaintiff declared, in February, 1915 (which was after the breach). Incidentally, Simon had an awkward preliminary snag to surmount. His client's integrity was beyond question, but he was not the most brilliant of men, and his House of Commons speech had contained certain unintentional inaccuracies. Simon prudently decided to admit these, before passing to his main business.

When he called Sir Charles into the witness-box, the defendant recounted his career at Eton and Oxford, in Parliament, in the Boer War, as Chairman of the Wireless Research Committee, and, finally, as Postmaster-General from February, 1914, to the following year. He described his visit that February to Berlin, explaining that it was due to a desire to test reports which he had received from various sources about telephone and wireless development in Germany. Among the papers which he took with him, he said, was a note that Marconis and the Telefunken firm had a working arrangement in order to avoid mutual competition. He had been invited to the Telefunken wireless station at Nauen, and on the way there the motor-car broke down about a hundred yards from where a German field-battery was practising an attack; the Telefunken directors were very anxious that he should not watch this, and they kept him walking up and down till the car was repaired.

The Judge then expressed the pious and irrelevant hope that this battery was the one which the French troops were reported to have captured on the previous day.

Sir Charles continued that he had spent three hours at Nauen, and, when asked if part of this time had not been devoted to luncheon, he replied, "Fortunately yes." He then described how, at the directors' invitation, he had sent a wireless message to the King of Togoland, from whom a reply had arrived half an hour later—though the witness doubted if this reply were genuine. He then denied that he had had any business conversation at all with any of the Telefunken directors; nor could he speak German. Coming now to the interviews with the plaintiff, Sir Charles stated that he and Mr. (later Sir) Evelyn Murray, the permanent secretary of the Post Office, were discussing the Marconi contract one evening in September, 1914, at Rutland Gate, when they decided to call in Mr. Isaacs about it. Mr. Murray left the house as Mr. Isaacs arrived. The witness agreed that the Telefunken firm was mentioned between him and Mr. Isaacs that night, but only to the extent that Mr. Isaacs had grumbled that Sir Charles had never visited the Marconi works though he had visited the Telefunken works. It was four months later, in January, 1915, the witness continued, that he first heard of the letter which the Telefunken directors had sent Marconis about him, and he at once asked for another interview with Mr. Isaacs, which was held at the Royal Automobile Club on February 6. He made a memorandum of this interview immediately afterwards, and he emphatically denied that this memorandum had been concocted later and in the light of later events.

Sir Leslie Scott's cross-examination did not shake Sir Charles's story in any particular, but the latter seemed a little hurt when Lord Darling asked him if he had not lunched with the Kaiser during his visit to Berlin. He treated this question as a reproach. "It was supposed at that time to be an honour," he said. "It was an invitation which I could not avoid." He was still ruffled when Sir Leslie Scott asked him why it should be considered so unlikely that he had sought to promote competition between Marconis and the Telefunken Company. "Supposing I was an absolute

fool," he replied, "as counsel represents me to have been, with this thing"—the note about the agreement between the two companies—"in my pocket telling me that these people wouldn't compete, I was to walk into the Telefunken office on my last day in Berlin and, in the course of a five-minute talk, to propose that they should come to England and receive private commercial assistance or Government funds over which the Postmaster-General has no control! I was to do all this with persons I'd never seen before! It could only be possible for a born idiot." Counsel hastily changed the subject by asking why the defendant, who knew nothing at all about wireless, should have been appointed to preside over the Wireless Research Committee. Lord Darling took it on himself to reply, and raised a laugh by saying that he had been made chairman of a committee about the National Lifeboat Institution, presumably because he had never been in a lifeboat.

As a suggestion had been made by the plaintiff that the Government had tamely submitted to judgment on the Marconi claim in order to protect Sir Charles from exposure, Simon called Lord Birkenhead, the Attorney-General, to testify that he had advised the Government to give way because, after Carson's opening speech for the other side, he did not think that a defence could be sustained; moreover, said the witness, he had not invited Sir Charles to any of his consultations about the matter.

After this the Judge managed to create a scene with Sir Leslie Scott. He interposed to say that the plaintiff's case was that the memorandum ostensibly made by Sir Charles after the second interview was a forgery. Sir Leslie said, "'Forgery' is not the appropriate word. I prefer to say 'fabrication.'"

"'Forgery' is the appropriate word," the Judge insisted. "I would rather use 'fabrication,'" replied counsel.

"Very well," sighed the Judge, "we will agree on that word."

The defendant's cross-examination lasted two days. He was then re-examined, and agreed that it would not have been consistent with his honour or with his position in the Government to have arranged competition for the three optional stations in the Marconi agreement; nor had he tried

to do so. In conclusion, he bluntly reaffirmed his belief that the statement he had made about Mr. Isaacs was true.

His sister, his wife, and Mr. Murray were then called to support his statement that Mr. Isaacs had come to Rutland Gate in September, 1914, and not in the following February. Miss Hobhouse, by the way, was unable to identify Mr. Murray until after he had given his evidence and she had been recalled to the witness-box. She then said she recognised him by his Oxford drawl. Sir Henry Norman, M.P., who among his numerous other qualifications was an early expert in wireless and had accompanied Sir Charles on the visit to Berlin, gave evidence that they had made no offers of any kind to the Telefunken people. Mr. Reginald M'Kenna, who had been Home Secretary at the time, came with Mr. Asquith's special permission to disclose what had happened in the privacy of the Cabinet: it had authorised Sir Charles in January, 1915, to withdraw the Government repudiation of the Marconi contract, and the witness had been appointed to act with him in the matter. This evidence rebutted the plaintiff's suggestion that Sir Charles had offered to revive the Marconi contract in order to remove Mr. Isaacs' foot from his neck.

All the evidence being now concluded, Simon opened his address to the jury by saying that the question before the jury was perfectly simple: Was Sir Charles a liar? Sir Leslie Scott followed for the plaintiff and spoke for four hours, in the course of which he told the jury that their responsibility was greater than usual because the Judge had indicated a prejudice in favour of the defendant. Lord Darling retorted to this, when he came to sum up, by remarking that counsel nowadays are much more afraid of a jury than of a Judge, and therefore pay them many more compliments.

The jury retired for an hour and a quarter, and then brought in a verdict for Sir Charles, Simon's client. Mr. Isaacs entered an appeal, based chiefly on the ground that the Judge had failed in his duties; but the appeal was dismissed without the other side being called on to reply.

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In France Simon was at Amiens during the ghastly retreat in March, 1918. He wrote a description of the scene outside the town, which was printed in that most readable of British periodicals, *Blackwood's Magazine*, the following December, and from which I venture to quote a few lines :

The majority of the crowd were women—the younger amongst them wearing their best clothes as the easiest way of carrying them. Facing the morning breeze, and with the sun behind them, many had started confident and almost cheerful in spite of bundles or satchels crammed with so much of their possessions as they hoped to be able to transport. Most of them had overestimated their powers: some were already staggering under the load. Here was a solitary crone, grey-haired and limping, with battered and bulging portmanteau in one hand and a reticule containing a pair of boots, a kettle, and a parcel from which a piece of dust-covered bread protruded in the other. Here was a young widow, dressed in the ugly livery of her condition, pushing before her a perambulator in which her baby was almost smothered by utensils and knick-knacks, snatched up from the dwelling where husband and wife and child had been happy together until the curse of war fell upon them. He lies in an unnamed grave before Verdun; she was walking aimlessly on; the child was beating a little drum. . . . One very old man I saw whose barrow, as he wheeled it, served as an armchair for his invalid wife; she sat there comfortably enough, hands folded in her lap and feet dangling, looking up at him as he toiled along with the wistful, patient gaze of the infirm, who must rely on another's strength and kindness. . . .

That night the Kaiser telegraphed to his Empress, "My troops continued their glorious advance, driving the enemy before them. God is with us."

One happy recollection, however, he snatched from the wretchedness of the War years. In Paris in December, 1917,



LADY SIMON, D.B.E.

he married again, and so put an end to the bitter loneliness which had encompassed him ever since the beginning of the century. His new wife was Mrs. Manning, the widow of a doctor; her son was at the moment a prisoner in Germany. She was an Irishwoman, a native of Wicklow, and from her early childhood she remembered meeting Parnell near her home and the strange horror of his haunted eyes. Deeply interested in social work, she had taken a course in midwifery at St. George's Hospital in London and the York Road Lying-in Hospital, and, after qualifying, had worked sixteen hours a day to alleviate the sufferings of East End mothers. Another interest was the abolition of slavery. "When I was at school in Tennessee," Lady Simon has said, "there was a little girl who was always alone. No one spoke to her. I was told that her father had been a slave and that I should keep away from her—and I have fought slavery ever since." Immediately after the War was over she began to collect material and statistics for a book, *Slavery*, which she published in 1929, with a preface by her husband. After a short consideration of the various sorts of slavery still in existence, the first detailed chapter of the book was about Abyssinia, and began with the scathing words, "Whatever slavery is in other parts of the earth, in Abyssinia it exists in every one of its varied forms"—which, with the evidence she provided, induced Signor Mussolini to send the book to Geneva in the winter of 1935 in support of his indictment of the country he was invading. In June, 1933, Lady Simon became a Dame Commander of the Order of the British Empire, "in recognition of her work in connection with the international campaign in support of the Anti-Slavery Convention."

Apart from these public services, she has played, and continues to play, a notable part behind the scenes of her husband's success; the help and encouragement she gave him in his years of political distress immediately after their marriage are not the smallest items in the debt he owes her.

§

She stood by him in the "khaki" General Election of December, 1918, when for the first time in his career he was faced with defeat.

The overgrown division of Walthamstow had now been divided into two parts. Simon stood as independent Liberal candidate for the new constituency of Walthamstow East, with its electorate of 28,363, of whom nearly half were newly enfranchised women; while Mr. Horniman, who had been chosen to succeed him when it was thought that he would fight in Manchester, stood for the western half of the old division. Mr. Johnson again came forward as Simon's opponent, and this time, with his coupon of recommendation endorsed by both Mr. Lloyd George and Bonar Law, he could reckon on the support of many Liberals who preferred the Georgian brand of Coalition Liberalism to the Simon-pure variety.

Simon had continued, in such few political utterances as he made after his resignation, to denounce the Coalition as a fatal influence for Liberalism. "A coalition is an avowed debasement of the political currency," he declared; "it cannot distinguish a sheep from a goat." His opponents in Walthamstow were more than willing, however, to attempt this task, and they concentrated all their powers of persuasion, insinuation, and abuse towards defeating him. Mr. Johnson—he had since the last election been Mayor of Hackney for four years and done considerable war-work (for which he was knighted in 1920)—cannot be blamed for the viler parts of the campaign against Simon. Allowing for the hysteria of the moment, little fault can be found with his main appeal:

ELECTORS OF EAST WALTHAMSTOW!

IF YOU WANT TO BACK UP THE MEN WHO HAVE WON THE WAR,

VOTE FOR JOHNSON

THE COALITION

AND

LLOYD GEORGE!

But his supporters behaved very badly. Some went out of their way to out-hooligan the hooligans who in former elections had broken up Conservative meetings, and Simon had the greatest difficulty in obtaining a hearing from the people whom he had represented for over twelve years. Equally unpleasant to anybody who cares to turn up the records of the contest, as I have done, are the outbursts of certain up-to-date Anglican clergymen who stood on Mr. Johnson's platform to preach an extravagantly militant and merciless brand of Christianity and, it may be surmised, to pay off sectarian scores against Simon's well-known Free Church connections. In general he suffered abuse calmly, but he found it necessary to deny one rumour which was supposed, doubtless rightly, to be doing his candidature much harm. He issued the following statement:

THE "COMFORTS FOR HUN PRISONERS" LIE!

I find, on returning from service in France, that whispers are going round to the effect that I subscribed a sum of money to provide comforts for German interned prisoners. This is wholly untrue. The true facts have already been published by me, and there is no excuse for circulating these untrue statements as if they were facts.

What happened was simply this. Early in the War a number of German and Austrian girls, formerly employed in England, lost their situations and were found in the streets without money or means of honest livelihood. The right thing to do with them was to send them back to Germany. Women have never been interned in any country. These girls could not in some cases be sent off at once because ships were not available. Some ladies arranged to gather these girls together and send them across the seas as soon as possible, and the same ship brought some English girls—including, I am told, some Walthamstow teachers—who were stranded in Germany back to this country. I gladly subscribed for this purpose, and for no other purpose. I do not believe that any man or woman in Walthamstow—certainly no one who has

daughters—would wish these young girls to have been left to the temptations of the streets. I know nothing of, and I had nothing to do with, any other object than this, and, as I myself was one of the Ministers engaged in internment German men, I had the best reasons for knowing that they were quite well enough fed, and I never dreamed of doing what I am now whispered to have done.

This slander is calculated to do me great harm, and I hope that Walthamstow voters, women as well as men, who do not believe in such electioneering methods will express their view by voting for me at this election.

The appeal to women to vote for him was, of course, necessitated by the fact that women of mature age had now been given the vote. There is, however, evidence that one of these new voters, when canvassed by Simon, replied, "Vote? Me vote? I'm a respectable woman!"

After what was described by a local expert as, despite these excitements, "the tamest, the dullest contest that has ever been known in the history of Walthamstow," the result of the poll was declared on December 29 as follows:

Johnson (Coalition Unionist)	...	9,992
Simon (Liberal)	... ..	5,781
		<hr/>
Coalition Unionist majority	...	4,211

Barely half the electorate had troubled to poll—not that this sweetened Simon's defeat.

Anybody who looks back over the record of Simon's war-time activities—his services as Attorney-General at the outset, as Home Secretary later, and then as adviser to Headquarters at the Front—will surely find it difficult to agree with Mr. Lloyd George's attack on him in 1934, sixteen years after the Armistice, when he declared that, the less said about Simon's political work in the war, the better.

It may be—I do not know—that Simon brought this attack on himself by a story he told at a public dinner in the

previous year. Once upon a time, he said, there was a lawsuit about the ownership of a picture. Its owner, in his will, had left all the portraits in his collection to one heir, and all his other pictures to another heir. The dispute concerned a lively representation of the battle of the Boyne, with the Duke of Schomberg prominent in it. The court was asked to decide whether this was a picture of the battle with the Duke in the foreground, or a portrait of the Duke with the battle in the background. "Once or twice, in studying recent works of reminiscences," Simon mused, "I have wondered whether a book was a picture of the Great War with Mr. X in the foreground, or a portrait of Mr. X with the Great War in the background."

CHAPTER TEN

THIS Armistice election, which lost Simon his seat in the House after more than thirteen years, was disastrous to the Liberal Party as a whole. Much of its former strength had become part of the Coalition with little hope of ever being extricated again. Of the rest, Asquith and Simon were both beaten, and only twenty-seven Independent Liberals—the “Wee Frees,” as they were now nicknamed—were returned to Parliament to dispute with the sixty-three Labour Members the hollow privilege of being regarded as the official Opposition. Sir Donald Maclean, who was a Privy Councillor and had been Deputy-Chairman of Committee in the House for the past eight years, was elected their leader in the Commons, but their inspiration remained outside with Asquith and Simon.

The last-named, busy again at the Bar, nevertheless missed no opportunity to keep the flag of independent Liberalism flying. Thus, the Government having prohibited the import of certain foreign goods, such as boots and furniture, by orders “made, as I believe and as most lawyers hold, without Parliamentary authority,” Simon warned the Board of Trade that, on his return from a holiday in Spain, he intended to test the validity of these orders by bringing with him a selection of the prohibited goods. During his absence, however, the system was abandoned, and on his arrival at Southampton he remarked to interviewers, “I see that Mr. Lloyd George, in announcing their abandonment, stated that the only effect of these prohibitions was to keep up prices. This is exactly what I and other Free Traders have always contended, so the main object I had in view has been attained.”

In December, 1920, a year after his reverse at Walthamstow, he tried to re-enter Parliament at a by-election in the Spen Valley division of Yorkshire.

The contest was necessitated by the sudden death of Sir Thomas Whittaker early in November. Sir Thomas, like his

father, was chiefly known in the country as a teetotal Radical of the most virulent type, though he had tempered this eccentricity by becoming a Coalitionist in his last years. The seat was traditionally Radical, which meant in post-War circumstances that it might continue to return a Liberal or might equally well swing over to Labour.

Three candidates were nominated: Colonel Fairfax as a Coalition Liberal, relying chiefly on the support of the Unionist minority; Tom Myers, a local man who, after working in a factory and a mine, had spent fifteen years in a glass-bottle works, as a Socialist; and Simon as a "Wee Free" Liberal. There was for a time a wild hope in the constituency that a celebrated local character, "Charlie John" Atkinson, would enliven the election by standing as an Independent. A nomadic vendor of cough-drops, he was accustomed to make speeches in Cleckheaton market-place on a variety of topics, partly perhaps to draw attention to his wares, but chiefly to give expression to an odd and assertive individuality. He had recently, for example, begun to preach a new religion, the basis of which was that "the Lord's Prayer was uttered two thousand years afore Christ were born, and 'twere twice as long then as 'tis now." His first enunciation of this theory, it is recorded, was interrupted by a ribald friend who remarked, "What dost tha want wi' it twice as long, Charlie John, when tha can't get through it as 'tis?" He had stood for Parliament in the past, but the new condition of a £150 deposit, which a candidate forfeited if he did not poll one-eighth of the votes, now led to his reluctant withdrawal and deprived the Spen Valley electors of comic relief.

It was indeed a dull election. Simon preached the gospel of Liberalism pure but practical. "Liberalism is practical idealism," he said; "it has nothing to do with impossible visions." Mrs. Lloyd George came down to speak for Colonel Fairfax in a vain endeavour to stir up the dying embers of Armistice enthusiasm for her husband and the Coalition. Polling took place on December 20, but the result was not declared until the New Year, when it was discovered that Mr. Myers had been returned with a small majority over Simon, Colonel Fairfax being well in the rear:

Myers (Labour) ...	...	...	11,962
Simon (Liberal)	10,244
Fairfax (Coalition Liberal)	8,134
<hr/>			
Labour majority	1,718

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Undismayed by this defeat, Simon promised to contest the constituency at the next opportunity—and to win it. Meanwhile, in 1921, he visited Canada, and on September 7 addressed the Canadian Bar Association at Ottawa on the nature of their profession.

It is an interesting speech, not least because of the light it throws on Simon's own character and outlook.* Thus "I may as well begin by admitting that, whatever be the explanation, there is in some quarters a painful prejudice against lawyers." In the eyes of many people, he explained, a lawyer was, at worst, "an unprincipled wretch who is constantly and deliberately engaged in the unscrupulous distortion of truth, by methods entirely discreditable and for rewards grotesquely exaggerated," and, at best, a man of infernal cunning, "by means of which he discovers at the last moment an argument which nobody has thought of, or produces a witness from some forgotten corner as a conjurer produces a white rabbit from the tails of his evening coat, and thereby, when all seems lost, overthrows the obstinate and rescues the innocent." Whereas, in truth, Simon suggested, an advocate is neither so unscrupulous nor so ingenious as is popularly supposed, but "a very plain, matter-of-fact, hard-working person."

Another popular fallacy, he said, was that brilliant advocates succeeded without work. Without believing all the stories told of the continuous labours of distinguished advocates in the past—"I have been assured, for example, by the son of a former Lord Chancellor, that when his father was at the Bar he never went to bed for a week. Well, that is hearsay evidence!"—he did not believe that any man could

* The full text will be found in *Comments and Criticisms*.

attain a great position in the legal profession "unless he is prepared to devote all his powers of mind and concentration upon the work he has to do and the preparation for the case he has to argue." To illustrate this he referred to the famous Tichborne case, which was so protracted that the hearing of the plaintiff's case lasted seventy days, twenty-two of which were taken up by his cross-examination; the opening speech for the defence lasted a month, and the summing-up in the final perjury proceedings lasted eighteen days. "That was something like a case!" Charles Bowen, the future Lord Justice, was one of the two juniors in that case from the middle of 1871 to the spring of 1874, and he used to say that there was not a single fact or date in all the evidence of which he was not fully cognisant and of which he was not prepared on the spur of the moment to give an immediate and correct account: yet (thus Simon passed to his next point) when the case was over,

I should doubt whether there was a single fact, or a single date, or a single circumstance in the whole of that immense accumulation of detail—all of which was in Charles Bowen's memory—that was of the slightest permanent value or interest to anybody on earth. There is the real tragedy of a successful lawyer's life. He is constantly under the duty—and if he regards his profession seriously, it is a most solemn duty—of learning the details about his client's business with a precision and a minuteness which passes far beyond the bounds of what is interesting or permanent; and, when he has done it, this vast and detailed study may to a large extent be wasted labour, leaving nothing of enduring value behind.

Next to the ability and the willingness to work, he went on, the elements of successful advocacy are accumulation, selection, and rejection. Economy of words and an avoidance of flowery rhetoric are the best methods of persuasion: "The truth is that, at its best, forensic eloquence is like dry champagne. However effervescent it may be when the bottle is first opened, it is impossible to preserve it in a good state

for very long." Simon therefore advised all his young listeners to eschew rhetoric as a substitute for work. "Believe me, the effective way in which the vocation of advocacy is followed is far more by devoting yourself to a precise and accurate understanding of all that is involved in the facts and the law of the case, and to have a clear and orderly statement of the consequences, than in the use of high-sounding and rotund phraseology."

He turned to the old problem of how an advocate could reconcile it with his conscience to defend a guilty man. "How is it possible that the members of an honourable profession should lend their powers of intellect, judgment, experience, argument, to the wrong side?" The answer to this, said Simon, is that an advocate works under severe restrictions of professional duty to discharge a task which is essential to the administration of justice; it is not his business to ascertain the truth, but his function is to present all that can usefully and rightly be said on one or other side of the case, in order that the tribunal shall be able to discover where the truth lies. This applies to criminal as to civil proceedings, to a prosecuting counsel as to a defender, and it is for this reason that no advocate ought ever to assert his personal belief in the merits of a case he is arguing. In any event, he added, in nine cases out of ten nobody can tell, at the beginning of a case, which side is right or wrong. Against this he quoted the exceptional experience, "the hard case and the sad case" of Charles Phillips, the Irish barrister who defended the Swiss valet Courvoisier in 1840 against a charge of murdering his master, Lord William Russell. In the middle of the case the prisoner privately confessed that he had done the murder, adding: "So now, Mr. Phillips, I rely upon you to do the best you can to prove that I have not." On the advice of a Judge the barrister decided that his duty was to go on with the defence as if his client had not volunteered a confession, a decision for which he was afterwards much criticised. However, such a case is far too rare to affect the general position.

Then Simon made a statement which seems to me to be of considerable biographical interest:

There must be many of you who, like myself, feel that a man's livelihood ought not to be the whole of a man's life. We feel that one of the great attractions of the advocate's profession—this career open to every man of good health and good brains, without regard to ancestry or wealth or station—is that it is a road to public service. . . . It is possible by the study of the practice of the law not only to render an essential service to the private citizen, but to fit ourselves for the greater work of helping to secure that government is what government ought to be.

There can be no doubt but that has always been the main-spring of his professional career. From the very beginning he has regarded the law as a "career open to talent," success in which may qualify its possessor, technically and financially, to play a part in politics.

I have, incidentally, heard Simon enlarge in private on the above theme. No matter how keen a barrister one is, he said, one can't go on indefinitely as an advocate: the work entailed is too full of detail and aggravation, and it eventually becomes superhumanly difficult to remain fresh. Either one must seek (if successful at the Bar) to become a Judge, or one must find some other outlet for one's energies, or one must simply abandon professional work. But, while one is an advocate, there is a constant stimulus for doing one's best, because a brief, though it may mean little to oneself, is usually of enormous importance to one's client. Yet the fact remains that, when a case is over, its interest vanishes for the advocate, just as an operation ceases to interest the surgeon who has carried it out. There is, however, he added, one respect in which the law is a more satisfactory profession than medicine or commerce: success in them is essentially a matter of private satisfaction to the practitioner, whereas a barrister may share his successes with his family; "there is no occupation so pleasant," Simon concluded cheerfully, "as being the husband of a successful barrister's wife!"

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His freedom from official duties meant that his practice at the Bar became much more varied and interesting in the post-War years than for many years previously. He was to be found on one side or another of most of the *causes célèbres* of the period. Perhaps the most important of these, though by no means the best known to the general public, was the constitutional issue decided in the case of *De Keyser's Hotel* against the Crown, in which Simon established a principle of law which had been denied by every official lawyer, including the future Lord Birkenhead.

There is a pleasant tradition that the English are a democratic people who from their earliest days have fought authority on behalf of the rights of the individual. This is not quite true: less complacent observers might suggest that the trend of English history in the past eight hundred years has been to transfer more and more of the powers and the privileges of the Throne, first to a small aristocratic class, then to a not much larger plutocracy (which, of course, included a section of the aristocracy), and, in our own days, to an ever-increasing bureaucracy in which the juicier posts are largely manned by members of the two former ruling classes. True, the individual citizen has a theoretic control over the bureaucracy nowadays, inasmuch as every now and then he may vote in municipal and Parliamentary elections for candidates who claim that their views correspond with his own, but nobody familiar with the working of the electoral system, in respect either of Parliament or of the City and County Councils, is likely to think that the citizen has yet achieved any sort of effective control over the bureaucrats. On the other hand, it cannot be denied that the individual has indirectly benefited from the struggle which has gone on over his head: when the barons compelled King John to sign the *Magna Carta* they unwittingly laid the foundation for a new conception of individual rights against the Crown, while the legislation which handed over control to the Victorian industrial masters has in the end brought considerable political advantages to the rest of the nation. The greatest significance,

perhaps, of the De Keyser affair is that it represented a victory for the community over the new bureaucracy; and this is something for which we may be thankful.

The salient facts of the case are these: In the middle of the War, in 1916, the Army Council wished to house the headquarters staff of the Royal Flying Corps in premises befitting its size and importance; the War Office applied to the Board of Works, who decided that De Keyser's Hotel, a famous pre-War establishment on the Thames Embankment near Blackfriars Bridge, would suit very well. The Board of Works thereupon opened negotiations to rent the building from the Receiver who was in possession of it; after a short time had elapsed without result, the Board wrote to him that

It will be to the advantage of all concerned to refer the question of the amount to be paid by the Government for the use of such of the hotel premises as will be required to the Defence of the Realm Losses Commission. In these circumstances the Board have no option but to communicate with the War Office with a view to the hotel premises, excluding the shops, being requisitioned under the Defence of the Realm Acts in the usual manner.

The next move was a letter from the War Office to the Receiver that it was about to take possession of the hotel, other than the shops and wine-cellars, under the Defence of the Realm regulations, and enclosing forms on which the Receiver could claim compensation from the Commission indicated. The letter went on:

Compensation, as you are probably aware, is made *ex gratia* and is strictly limited to the actual monetary loss sustained.

It was this sentence round which much of the litigation was fought, because the Receiver contended that he should receive compensation as *of right* instead of as *an act of grace*.

He at first answered that, though he would facilitate the entry of the Army Council on his premises, he did so with-

out prejudice to the question whether they were within their rights in acquiring possession; and he followed this up with a protest denying that the acquisition of the hotel was necessary for defence purposes or that the acquisition was within the powers conferred on the authorities by the Defence of the Realm legislation (which ordinary mortals know as "Dora"). Further, he refused to put forward a claim to the Losses Commission, but instead asked the courts to declare that he was entitled to receive a fair rent so long as his premises were occupied; he estimated the sum owing to him to be precisely £13,520 11s. 1d. Departments concerned and the Law Officers considered the matter and submitted a reply in which, after setting out the need for possession of the hotel in the existing "state of war," they declared that such possession was taken "by virtue of His Majesty's royal prerogative" as well as by powers conferred by "Dora"; therefore, they asserted, no rent was necessarily payable, though the Crown, as an act of grace, was still ready to pay any sum determined by the Losses Commission.

The case was heard in the first instance in March, 1918, by Mr. Justice Peterson, who decided in the Crown's favour, explaining that he was bound by a previous decision of Mr. Justice Avory and the Court of Appeal upholding the Crown's right to acquire without compensation some land at Shoreham in Sussex for an aerodrome in 1915. (In this Shoreham case, by the way, it was only the legal aspect which was in dispute; the authorities were quite prepared to pay, and did pay, *ex gratia* compensation for the land.) The Receiver promptly entered an appeal, which came up for hearing a few months later. His legal advisers had by this time made researches into the archives of the Public Record Office, the War Office, and other departments, with a view to ascertaining what the practice of the Crown had been in former wars as regards the acquisition of land and premises for defence purposes. It must be remembered that "Dora" was by no means the first of her family; even since the days of Queen Elizabeth legislation of this type had been enforced, and indeed the Defence Act of 1842 was the statute chiefly debated in the later stages of the action.

The Court of Appeal found the new material so interesting that they adjourned their hearing from July, 1918, to January of the following year, in order to allow further researches to be undertaken. This delay allowed Simon to take part, and when the hearing was resumed he appeared to lead for the hotel, assisted by Sir Leslie Scott, K.C., and other distinguished Council. For the Crown were the late Lord Birkenhead and the present Lord Hewart, Attorney-General and Solicitor-General respectively, and others.

The Crown's case being that it was entitled to act as it did by virtue both of the royal prerogative and of "Dora," Simon took up each of these claims in turn, and we shall see now what his arguments were.

He explained that the royal prerogative is a power of the Crown sanctioned by the Common Law, but conditioned ever since 1611 by the principle that "the King has not any prerogative except such as the law allows." In other words, it is to-day a residue of such of the former arbitrary authority of the Crown as has not been specifically taken over by Parliament. The Law Officers' submission was that the King, having the right and the duty to protect the realm, is entitled in time of war to take anybody's property for the purposes of defence. Neither side, however, could produce any legal authority in any age to show whether such action on the part of the Crown involved the payment of compensation. Therefore Simon asked the Court to consider the *practice* of Kings in the past, as recorded in public documents: the effect of these was that, up to 1708, property had been acquired by the Crown in such cases by private negotiations which had involved payment, while, after 1708, it had been acquired under statutory provisions which themselves provided for compensation. No record could be traced of any acquisition of land except by one or other of these two methods.

Against this it was submitted by the other side, and accepted by the Judges, that the fact that the Crown had usually paid in the past did not create an obligation on it to pay. Simon countered this by pointing out that apparently the Crown had never asserted a right to take a subject's land

without paying for it. Moreover, since there were now statutes which covered the taking of property (and incidentally provided for compensation), he argued that there was no longer any room for the existence of prerogative in relation to it. This argument was afterwards adopted in his judgment by one of the Appeal Judges (Lord Justice Swinfen Eady), who said, "What use would there be in Parliament's imposing limitations, if the Crown could at its pleasure disregard them and fall back on prerogative?"

Moreover, Simon urged, though the Law Officers mainly based their case in court on the prerogative, the actual acquisition of the hotel by the Board of Works was expressly made under statute—that is to say, by virtue of "Dora"—as may be seen from their letter already quoted. This was an additional reason, he said, why the Crown must not now seek to fall back on the prerogative; having acted under statutory authority, it must abide by such authority.

And so he came to consider whether "Dora" conferred power on the Board of Works to take the premises without payment. When the Napoleonic wars were in progress, he explained, and land was seized for defence purposes under powers conferred by "Dora's" ancestors, the Crown had always paid compensation. Was it really suggested by the Law Officers in the present case, he asked, that "Dora" was to sanction something which had never been sanctioned before, a grosser form of interference with the subject than a democratic country would have dreamed possible at any other time? True, "Dora" gave the Crown power to issue regulations for the defence of the realm, and included a provision that "any such regulations may provide for the suspension of any restrictions on the acquisition or use of land": the Crown was now claiming that this enabled it to acquire land without payment, but Simon insisted that the payment of compensation could not seriously be regarded as a "restriction." His point was later endorsed by the House of Lords, where Lord Atkinson said, "The Legislature cannot fairly be supposed to intend, in the absence of express words showing such intention, that one man's property shall be confiscated for the benefit of others or of the public without any

compensation being provided for him in respect of what is taken compulsorily from him. Parliament in its omnipotence can override or disregard this ordinary principle . . . but it is not likely that it will be found to disregard it without plain expression of such a purpose."

The Court of Appeal, however, being bound like the lower court (thanks to the system of precedent law in England) by their own decision in the Shoreham case, could not give judgment for Simon's client unless they could draw a distinction between the Shoreham facts and those immediately under consideration. Two of three Judges managed to discover such a distinction in that the land acquired at Shoreham was for the accommodation of a fighting unit on the sea-front, whereas the acquisition of De Keyser's Hotel was for the accommodation of an administrative unit at the rear! So Simon won the appeal; but the Crown carried the issue to the House of Lords, which, after long deliberation, upheld the Court of Appeal's decision—but on different grounds. Their Lordships did not think it necessary to distinguish the Shoreham facts from the De Keyser facts and, not being bound (as the lower courts were) by the Court of Appeal's judgment in the former case, decided in favour of Simon's client on the general arguments he had presented—namely, that statute law had taken the place of the royal prerogative in such matters, that past statutes had provided for the payment of compensation to subjects whose property was seized, and that the provision contained in those earlier statutes (especially the Defence Act of 1842) must still apply, because "Dora" conferred no new powers on the Crown for acquiring land.

And so, for what it is worth, an overweening bureaucracy was vanquished for once.

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Simon appeared for the petitioning husband in the first part of the long and sensational Russell divorce proceedings, which I do not propose to describe in any detail here. All that need be mentioned is that he called his client as a witness and elicited from him certain evidence which afterwards

provoked much legal argument. No objection was raised to the evidence by the other side, but, in the House of Lords, Lord Birkenhead held that evidence of such a nature could not be tendered by a husband or wife in divorce proceedings with the object of bastardising a child of the marriage.

About the same time Simon represented Messrs. Brunner Mond in two ponderous and profitable cases in which they, the Manchester Ship Canal Company and the Government were all concerned. The Canal Company sued Brunner Monds for tolls and ship dues payable by their vessels for passage along the Canal, and Monds retorted that they were fully entitled to a free use of the Canal because the Canal Company had failed to maintain a navigable and defined access to their main channel, as they were legally required to do. Whereupon the Attorney-General claimed a declaration from the court that the Canal Company was under statutory obligation to maintain the access. The case, the details of which are as turgid as the waters they concerned, was carried from court to court until in the end the House of Lords held that the Canal Company must succeed against both Monds and the Crown, because it had properly discharged its obligations towards them.

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Meanwhile, in 1922 Simon fought two elections, one for the Rectorship of Glasgow University, the other in a Parliamentary General Election. In the former he was opposed by Lord Birkenhead and by Mr. H. G. Wells, the novelist, who stood as a Socialist; Lord Birkenhead was elected, receiving 1,165 votes against Simon's 530 and Mr. Wells's 353; and it will be recalled that his rectorial address contained a reference to the "glittering prizes offered to those who have stout hearts and sharp swords," which, wrenched from its context, was used by some of his political opponents—but not by either Simon or Mr. H. G. Wells—to suggest that he was a vicious militarist.

At the General Election Simon was invited to be Liberal candidate in the Roxburgh and Selkirk division. He refused this offer and telegraphed to his former supporters in the

Spen Valley, "Have declined Roxburgh. Will fight and win Spen Valley." The Coalition being dead—its death had brought about the election—no alleged "Coalition Liberal" appeared in the constituency; instead, Mr. W. O. R. Holton came forward as a downright Tory. Mr. Tom Myers, the Labour victor of 1920, sought re-election, and from the outset the issue lay between him and Simon. Philip Snowden had just put forward the Capital Levy as a fighting creed for the Labour Party, and Simon's slogan was, "Vote against the Capital Levy and support the Liberal policy." In his first speech of the campaign he coyly told his audience that "I feel like a young lady who has a great many admirers, but who tells them that she is engaged. I have been engaged for a long time now to the Spen Valley and I want to get married, so I invite you to the wedding on polling day."

It was a close fight and not a very pleasant one, for feeling ran high between the Radicals who favoured Simon and those who had turned to Socialism. When the result was declared on November 16, it was discovered that Simon had won the seat by a very narrow margin:

Simon (Liberal)	...	...	...	13,306
Myers (Labour)	...	...	...	12,519
Holton (Unionist)	...	...	...	8,104
				<hr/>
Liberal majority ...				787

Simon had added three thousand votes to his previous poll, Myers only five or six hundred. There was an illuminating similarity between the Unionist poll of 8,104 and the "Coalition Liberal" figure of 8,134 two years before.

When the winner came out on the steps of the Cleckheaton Town Hall to make the usual speech of thanks to his supporters, a Socialist voice cried, "It's the motor-cars did it," and Mr. Myers, when his turn came to speak, complained that Simon's refusal to accept a safe seat in Scotland had shown that his chief desire was to defeat Labour in Spen Valley. Mr. Myers seemed to think this a most indecent ambition.

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Back in the House, Simon at once resumed his old prominence in debate, though the Independent Liberals were a small minority in the House, numbering barely sixty against the 344 Unionists and 140 Socialists; they had, however, the satisfaction of being slightly more numerous than the rival "National" Liberals who still followed Mr. Lloyd George. Simon was appointed Deputy-Leader of his group and, since Sir Donald Maclean made no claim to great fighting powers, became its chief spokesman.

His principal speech in the short-lived Parliament of 1923 was in a debate on the merits of Socialism, which was initiated by a resolution brilliantly moved by Philip Snowden and opposed in a telling speech by Sir Alfred Mond (the late Lord Melchett). The debate began in March and was not intended to last more than a day, but the interest roused by these two speeches was such that an additional day was granted in July, when Simon spoke. He began by saying that one could hardly expect even the most appetising dish in the Parliamentary bill of fare to keep fresh for four months, especially in the heat-wave which had now come to the country, but at least the delay had given everybody an opportunity to read and digest the opening speeches. The resolution,* he suggested, could only be accepted if three propositions were approved: first, that Capitalism had on balance produced an accumulation of evils which outweighed all its benefits; secondly, that these evils could not be alleviated otherwise than by the overthrow of Capitalism; and, thirdly, that a Socialist system could be introduced in its place which would not be more injurious to human happiness and progress. He declared that Snowden had not made the smallest attempt to prove any one of these propositions.

* "That, in view of the failure of the Capitalist system to adequately utilise and organise natural resources and productive power, or to provide the necessary standard of life for vast numbers of the population, and believing that the cause of this failure lies in the private ownership and control of the means of production and distribution, this House declares that legislative effort should be directed to the gradual supersession of the Capitalist system by an industrial and social order based on the public ownership and democratic control of the instruments of production and distribution."

It was all very well, he said, for the Socialists to draw attention to the economic dislocation which had followed the War, but what authority had they for assuming that this was directly and solely due to Capitalism and that, if Capitalism were abolished, it too would disappear? If everything that had happened in the last hundred years was to be attributed to Capitalism, was the balance entirely on the wrong side? He quoted from one of Snowden's pre-War books a long list of legislative benefits which had come to the working-class in recent years, and a statement from the same source that in the latter half of the nineteenth century wages had increased by not less than sixty per cent., while the cost of living had declined; even since the War, he pointed out, Snowden had written that "the tendency is for real wages on the average to rise." Simon said he was not asserting that wages had risen high enough or fast enough, but, on the other hand, one must recognise that the population of Great Britain had swollen from eleven to forty-one millions during a century. "How is that increase possible without the operation of a system which has so immensely increased the power of a country to produce wealth?" In the last thirty years, too, the annual receipts of the Post Office Savings Bank had increased fourfold; in little more than a generation ten years had been added to the average span of life both for men and women, while infant mortality had been halved. He added to this list of the presumable benefits of Capitalism a quotation from an article by Mr. Sydney Webb (now Lord Passfield), the veteran Fabian who had lately become a member of the House, that "bad as we are sometimes tempted to think the present condition of the people, it is clear that on the whole there has been a substantial advance since 1837" in real wages, working conditions, and the general standard of life.

Mr. Webb, who is not a brilliant debater, interjected, "What is the date of that article?"

"The date of that article is 1897," Simon replied.

"Thirty years ago!" Mr. Webb announced with an air of finality, and laid himself open to the cutting retort, "Are we to understand that the industrial revolution, which began,

I think, about 1780, did not have deleterious effects until 1897?"

Dealing now with the second of the three propositions he had outlined, Simon argued that bad industrial conditions were not necessarily a concomitant of Capitalism; one had only to look at places like Port Sunlight and Bournville to see that bad conditions could be remedied without the need of transforming the whole economic structure. While, as for the third proposition, that the supersession of Capitalism by a Socialist system would be of general advantage, this did not appear to be the case if one judged by such experiments as had recently been tried in Russia or in Queensland, where for the past six or seven years Socialists had been in power. Unemployment in Queensland in 1921 was greater not only than in any other State in Australia, but also than in any other country in the world which tabulated unemployment statistics. As for efficiency, the State railways in Queensland had in five years turned a surplus of £50,000 into a deficit of £1,500,000.

The truth, I venture to think, is this, that Socialism cannot compel the consumer to buy more commodities or to pay more for services. Treating the Capitalist system as dating from the industrial revolution, its history in this island, among other things, is that it has supported a far larger population than could possibly be supported without it.

It would doubtless be possible, he agreed, to establish public ownership in any given branch of industry, and "there are cases where, in my humble judgment, it is quite right to do so"; but, if private enterprise were everywhere destroyed, communities could not raise revenue by taxing its profits. Even though one branch of industry might be made to support other less profitable branches, "the system cannot be applied successfully to industry as a whole, unless the incentive to production under public ownership and democratic control is greater than under private enterprise and competitive energy." Experience did not justify the assumption that such was the case, or was ever likely to be. This being so,

Simon asked, had the Socialists considered what would happen to our export trade if their views were adopted in this country but not in America and France and other countries which competed with us?

If it turns out that the new system does not in fact carry on these tremendous and complicated enterprises with the same success as the system you are displacing, are you not running a great danger of destroying the means of livelihood of hundreds of thousands of British working men who are looking to you for guidance and advice?

At this some of the Socialists behind Simon laughed. He turned and gravely insisted that he was making a very important point to which they would do well to listen carefully. Then he raised a question which he had originally posed in that undergraduate essay at Oxford a quarter of a century before: "Has the British workman who is attracted by the Marxian philosophy appreciated that the price of adopting it is the sacrifice of reasonable personal liberty?" He assured the House that "I am quite unable to see how in a Socialistic State you can avoid conscription of labour and how you can avoid penal labour institutions for those who refuse to accept the occupation assigned to them," and ended by insisting that, with the three propositions not only unproved but seemingly incapable of proof, Snowden's resolution fell to the ground.

The way to humanise industry is not to put it into the strait-jacket of universal Socialism; it is to use the force of public opinion, the power of Parliament, to correct the rigours of unrestricted selfishness by putting public needs and human rights before private interests, and by doing this, as I believe it can be done, without sapping the energies or undermining the liberties of the British people.

Snowden's motion was defeated by 368 votes to 121.

The even tenor of political affairs in 1923 was brusquely checked by the decision of Mr. Baldwin, who in the temporary

absence of the chief Conservative leaders had stepped into Mr. Bonar Law's shoes as Prime Minister, to go to the country in November on the Protectionist issue, without warning and with no reasonable hope of success.*

Simon at Spen Valley prepared to fight his eighth Parliamentary election in seventeen years. Tom Myers stood again for Labour, but Mr. Holton's place as Unionist candidate was taken by Mr. Eugene Ramsden, a young textile exporter from the neighbourhood (who afterwards became M.P. for North Bradford). The fact that Mr. Baldwin was fighting the election on the fiscal issue united Liberals in opposition to him throughout the country. Since, however, as I have pointed out, the anti-Simon Liberals in Spen Valley seemed either non-existent or to have become avowed Conservatives, this reconciliation could make little difference to Simon's chances. He was eventually returned with a majority of 1,075 votes over Mr. Myers, the actual voting being:

Simon ...	...	...	...	...	13,672
Myers ...	...	...	...	...	12,597
Ramsden ...	...	...	...	...	7,390

It is curious how little variation there was between these and the last figures. Simon had increased his poll by a mere three hundred, while Mr. Myers had gained just eighty supporters, and the Conservative had lost but seven hundred. Such, to be sure, was not the rule elsewhere. Mr. Baldwin's leap in the dark not only reduced his Party strength in the House by ninety, but his 250-odd followers were now in a

* People who regard Mr. Baldwin as a statesman gifted with imagination and foresight may care to know that their view has lately been endorsed by a competent Communist spokesman. "All these problems [of 1923] seem to point to one solution—forestalling a Labour majority by the immediate translation to office of a Labour minority, governing by grace of the Liberals. It was a daring solution, requiring all the skill in political manœuvring in which the British governing class has so long excelled. Even if it was not conceived in these clear terms, the point remains that no other hypothesis explains the turn of events. Mr. Baldwin dissolved and appealed to the country, playing up the one issue, tariffs, calculated more than any other to damage his own party and to hand seats by the score to both Labour and Liberal" (*The Post-War History of British Working Class*, by Allen Hutt, 1937).

minority to the combined Free Trade forces of 191 Socialists and 158 Liberals, who at once banded together to put the Labour Party in power for the first time in English history.

The only item of interest which I have been able to trace during this Spen Valley campaign was a remark by Mr. Bates, president of the local Liberal Association, who announced to a cheering audience that "Free Trade is, I believe, almost as dear to Sir John as is his wife." There must, however, have been a number of unrecorded incidents, since, when Simon made the usual speech after the declaration of the poll, he said he would like to thank Mr. Ramsden for the fair way in which he had fought, but pointedly ignored a cry from the crowd of "And Mr. Myers too." And, as will be seen later, the Labour Party in Spen Valley was becoming more and more bitter towards him.

CHAPTER ELEVEN

TOGETHER with Mr. Asquith and Mr. Lloyd George, Simon led the outwardly reunited but inwardly still divided Liberals in the 1924 Parliament. They made it possible for Mr. Ramsay MacDonald to turn Mr. Baldwin out of office and to form the first Socialist Government; but it was understood that their support—so far, at least, as Simon was concerned—would continue only so long as the new Ministry pursued a middle course between drifting reaction and extreme Socialism.

His principal speech in the early months of the year was in a debate on the Air Force estimates. With his experience in the R.A.F. in the War, he was specially qualified to speak. He supported the estimates, which incidentally showed an increase of two and a half million pounds over the Conservative Government's in the previous year, though, as he explained, he regarded the position with alarm; it might well be that increasing our power in the air would prove only a step in a new armament race. At the same time—

I do not see—it is no use pretending that I do—why France finds it necessary to keep a fighting force of 1,260 aeroplanes four years after the peace. But there is the fact, and, if you are living in a practical world, imperfect and truncated as the solution would be if all we can do is in a modified degree to imitate that expenditure, I conceive that we are absolutely bound to have some regard to it.

We had cut down our Air Force to the bone after the Armistice, he reminded the House; unfortunately, other nations within striking distance had not done the same. It was no use pretending that a proportionate increase of armaments everywhere could have the same effect as an all-round decrease; and for this reason he looked with anxiety at the future, because “unrestricted development of air competition, especially in the production of aeroplanes for bombing pur-

poses, means the definite abandonment of restrictions upon warfare which it has been the effort of centuries of humanity to establish and respect." The truth is, he went on, that the reprisals of one war become the normal practice of the next. We had been indignant when the enemy first used poison gas against us in France, but we had then used it ourselves as a reprisal. "It may be that it was justified as a reprisal, but can anyone say that in the next war the British Army is not going to use poison gas except as a reprisal?" So, too, everyone had been indignant when German submarines sank innocent merchant ships, but "are we quite sure that, when another war comes, this will be regarded by civilised warfare as so impossible an action as it seemed to us then?" There was similarly, he prophesied (and later events have borne him out), a distinct probability that bombing aeroplanes would be used in wars, not only for direct military objectives, but also to strike terror into the civil population, which would mean a return to the horrors of medieval warfare despite all the attempts of modern generations to regulate its barbarity:

The only hope in the matter is that there should be an attempt made, however difficult it may be, to get some form of international limitation. If we go on pretending to one another that the bombing aeroplane is merely engaged in hitting combatants and is not doing any damage to non-combatants, we are talking nonsense.

Thus, though we had not started the race in armaments, our joining in it at this stage was not even the beginning of a solution.

We cannot confine the horrors of the next war in any way if that war is going to be conducted on the basis of unrestricted, unregulated, indiscriminate bombing destruction [he concluded]. I hope the Committee will excuse me for pointing out that it is this new problem, this sinking back into what was the practice of the Middle Ages, and the abandoning of the principles laid down in the Hague Convention and written in the manuals of military law of every country, which is the

serious question which has to be considered when we discuss future fighting in the air.

Every word of this has since been proved to be true by the hideous events in Spain, China and elsewhere. Then in 1924, if ever, was the moment to prevent the extension of bombing and the dropping of gas from the air: that the Labour Government were patently unable to limit the scope of future aerial warfare by international agreement must not be held against them, for they could not achieve the impossible; but the memory of this failure might at least remind partisan critics that later Governments had been even worse placed to remove this scourge.

§

In the autumn of the year he was directly responsible for the downfall of Mr. MacDonald's Government. Two issues had driven a wedge between the Socialists and the Liberals—the obscure and suspect negotiations for granting a loan to Soviet Russia and the circumstances in which the prosecution of a British Communist writer was dropped. In both these disagreements a matter of principle was involved: Simon and his Party had assisted the Labour Party to take office with a generally progressive policy, but they had no intention of standing by if the Government showed signs of capitulating to its extreme supporters. So far as the Russian loan was concerned, Mr. Lloyd George was the spokesman of Liberal opposition, but trouble was averted, or at least postponed, by Mr. MacDonald's typically vague explanations. In the second affair, however, Simon led the Liberals, and he was not to be outmanœuvred. The result was one of the most dramatic Parliamentary episodes of recent times.

Mr. John Ross Campbell, the acting editor of the *Workers' Weekly*, the official Communist paper in Great Britain, was charged at Bow Street on August 6 under the Incitement of Mutiny Act for publishing an article which, it was alleged, incited members of His Majesty's forces to disobey their officers and to set up soviets in the Army, Navy, and Air Force. After formal evidence had been given, the case was

adjourned, but when it next came before the court on August 13 Mr. Travers Humphreys (now Mr. Justice Humphreys), the Treasury counsel, announced that the authorities had decided not to proceed with the prosecution—on the ground that representations had been made that the article did not bear the meaning previously suggested. Mr. Campbell and other Communists professed mingled indignation and triumph; they had been eager, they said, to justify in court every word of the article and to call evidence for this purpose, but at the same time they welcomed the apparent fact that the calling off of the prosecution was the result of Left Wing pressure on the Cabinet. The Conservative and Liberal Press also asserted that proceedings had been dropped because some extreme members of the Labour Party had insisted on this.

Simon became aware of the incident during the vacation. The more he examined it, the less he liked it; and in a speech to his constituents in the Spenn Valley he formally charged the Cabinet with having tampered with the process of the law for political reasons.

It was recalled that when the Attorney-General, that brilliant advocate Sir Patrick Hastings, had announced in the House at the beginning of August that Campbell was to be charged, Mr. Maxton, the Socialist Member for Bridgeton, had declared that the article might be taken to refer only to the use of troops in industrial disputes, and had added that a large number of Socialist Members shared the views in the article; while his friend, Mr. Buchanan, M.P. for Gorbals, had said that the article was in accord with the decisions of several Labour Party conferences and with views previously expressed by some of the Cabinet, and another Left Wing M.P. had warned the Government that, if the prosecution was persisted in, the Government would lose half its votes in the House and in the country. This was at question time on August 6, and that same afternoon the Attorney-General decided to withdraw the charges. On August 7, Parliament separated for the holidays, but, largely owing to the effect of Simon's holiday speech, the question came up immediately when the Commons met again on September 30.

Sir Frederick Hall and Sir Kingsley Wood both put down questions asking why the prosecution was withdrawn. Sir Patrick Hastings replied that, though he had at first authorised the police to institute proceedings, he had subsequently learned several mitigating facts—namely, that Campbell was only acting temporarily as editor; that he had not himself written the article, but had merely inserted it as an extract from some other publication; that he could not be shown to be responsible for the policy of the paper, as he was apparently not a member of the Communist "Political Bureau" which controlled it; and, finally, that his War record was good and his War injuries severe (he had been badly wounded in both feet). Therefore, Sir Patrick explained, he realised that his original intention to have Campbell tried by jury had been a mistake, but "I desire to add that no person at any time has made any attempt to influence my decision in this matter, and that no member of His Majesty's Government suggested, or even knew of, the proposal until I myself informed them of it."

At this Simon shrewdly asked Sir Patrick whether it was "with his knowledge that the statement was made by counsel for the Crown that the prosecution was withdrawn because representations had been made since it was instituted as to the meaning and character of the article." For it was clear that the official statement in court was quite different from the explanations now offered by the Attorney-General. Sir Patrick Hastings replied that the first time he knew that Mr. Travers Humphreys had made the statement was when, receiving a report of Simon's speech on the matter, he asked Mr. Humphreys to explain what he had in mind when he made it. Mr. Humphreys, he went on, said that he understood that he was repeating what had already been said in the House in regard to the meaning of the article.

Simon then asked whether the House was to understand that neither the Attorney-General nor anybody in his department was aware of Mr. Humphreys's statement until the report arrived of Simon's speech. "The right honourable and learned gentleman may take my answer as strictly accurate," Sir Patrick Hastings retorted sharply, but not very helpfully.

His answers had by no means disposed of the matter, and it was at once agreed to debate it at the first possible opportunity, which arrived a week later, on October 8. Sir Robert Horne announced that he intended to move a resolution in the following terms :

That the conduct of His Majesty's Government in relation to the institution and subsequent withdrawal of criminal proceedings against the editor of the *Workers' Weekly* is deserving of the censure of this House.

It also became known that Simon, on behalf of the Liberals, proposed to move an amendment which, without going so far as Sir Robert's motion, would demand the appointment of a Select Committee to enquire into the whole affair. Mr. MacDonald, however, stated that he would not accept Simon's proposal any more than the Conservative rebuke, and he threatened that, if either were approved by the House, he would resign and precipitate a General Election. He hoped in this way to scare the Liberals from persisting with their proposal and to play them off against the Conservatives on the vote of censure.

There was a brush at question time before the debate began. The Prime Minister rose to correct a statement he had made in a previous exchange on the subject, when he had said: "I was not consulted regarding either the institution or the subsequent withdrawal of these proceedings. The first notice of the prosecution which came to my knowledge was in the Press. I never advised its withdrawal, but left the whole matter to the discretion of the Law Officers, where that discretion properly rests. I never received any intimation, nor even a hint, that I should be asked to give evidence." He now explained that, in natural anger at the imputation that he had ordered the withdrawal of the prosecution because he feared to be called into the witness-box, he had implied that he had no cognisance of what had happened. This, he said, was incorrect; like the rest of the Cabinet, he was cognisant of the affair, but had certainly not regarded it from any such personal angle as was implied in part of the question.

Mr. Austen Chamberlain then suggested that the House was entitled to have a frank statement before the debate "as to how that cognisance was taken." Mr. MacDonald replied that, as soon as he saw a report in the papers that Campbell was to be charged, he got the facts and "I then expressed a view upon the prosecution, a view not about what was going to happen to the prosecution, but about what happened." This somewhat baffling statement brought Simon to his feet to ask the Prime Minister, "Would it be convenient to him to tell the House what view he expressed?" To which Mr. MacDonald answered that he thought it better not to anticipate the statement which Sir Patrick Hastings was about to make in the debate; but in answer to other questions by Mr. Chamberlain and Sir Kingsley Wood he assured them—which was not in the least what they wished to know—that "I was not consulted regarding the institution of the prosecution."

Sir Robert Horne opened the debate half an hour later before a crowded and rowdy House. He had hardly begun when the Speaker rose and announced that he did not intend to allow interruptions; each side was to be permitted to put its case properly and quietly. Resuming, Sir Robert said that his first argument was that full liberty could only exist in a country if the political executive were excluded from interference with the mechanism of the administration of justice; it was for this reason that a salutary rule had always been observed in this country that the Attorney-General must be entirely free from political influence when forming his opinion on matters of prosecution. Mr. Ramsay MacDonald exclaimed loudly, "Hear, hear!"

Unimpressed by this gesture, Sir Robert pointed out that Campbell himself had claimed that the Government had interfered with the course of justice, and he quoted Campbell's and other Communists' denials that the article had merely referred to the use of troops in industrial disputes. Moreover, the *Workers' Weekly* had stated specifically in a subsequent issue that "the withdrawal of the charge was made on the sole responsibility of the Labour Government under severe pressure from such well-known Labour Members of

Parliament as Mr. George Lansbury, Mr. James Maxton, Mr. A. A. Purcell, Mr. John Scurr, and many others." Was this so? Sir Robert asked. Had Mr. Lansbury or any of the others approached the Government in the matter? "In the course of this debate I hope the House will have an opportunity of being informed by these gentlemen themselves," he remarked; but I may mention at this point that not one of them spoke that day. Sir Robert then referred to Sir Patrick Hastings' answer to Simon a few days previously that, until he read a report of Simon's speech, he did not know the nature of the explanation in court on which the prosecution was withdrawn.

At this Sir Patrick interrupted to say that, to the best of his belief, the first time he knew what Mr. Travers Humphreys had said was when he read a report of Simon's speech in a copy of *The Times* which he bought on holiday in Brussels. Sir Robert Horne sarcastically expressed his surprise that Sir Patrick had been spared all communications from his private secretaries on a matter which was filling the columns of the Press; he then rebutted, one by one, the excuses put forward by the Attorney-General on September 30 for not going on with the charge against Campbell. Thus Sir Patrick had said that Campbell was only a temporary editor, but the *Workers' Weekly* certainly regarded him as its real editor, and, moreover, he was no inexperienced journalist, but a well-known Communist writer. Sir Patrick had said that Campbell had not personally written or commissioned the article, but the *Workers' Weekly* stated that the article had been directly written for the paper on Campbell's instructions. Sir Patrick had said that Campbell was apparently not a member of the "Political Bureau" which controlled the paper's policy, but in fact Campbell had been appointed in Moscow in the previous year to be a member of the Bureau, and was also a member of the Central Committee of the Communist International. Sir Patrick had said that Campbell's military record was most admirable; so it was, said the speaker, but good character was no defence to a criminal charge, though it might be taken into consideration before sentence was passed.

Then Sir Robert came to the time factor. On the afternoon of August 6, he pointed out, Campbell was brought into court for the first time; that same afternoon Left Wing members of the Labour Party had taken objection in the House to the prosecution, and one of them, Mr. Scurr, had announced that he would raise the matter again on the adjournment that evening. Sir Patrick had at once said—this was about four o'clock—that he was determined to have Campbell prosecuted; but at six o'clock the Cabinet met, and before the debate started in the evening Sir Patrick privately informed Mr. Scurr that the prosecution was to be withdrawn. What had happened in the meantime? "One thing, we know, did take place in the interval. There was a hurried summoning either of a Cabinet or of a conference of Ministers."

Mr. J. H. Thomas interrupted to say that the Cabinet had been called to hear his and Arthur Henderson's report on Irish affairs, but Sir Robert suggested that the Attorney-General should, if he could, deny that the Campbell case had been brought up at the conference. Meanwhile must not the inference be drawn that it was the Cabinet which had decided that Campbell must be released and the charge against him dropped?

Sir Patrick Hastings rose to reply. His task, he explained, was a double one, for it was clear that not only the Government, but he individually, was meant to be censured by Sir Robert's motion. He said that he proposed to make a very full explanation, even at the risk of detaining the House, and that he held in his hand a written statement made by Mr. Travers Humphreys at his request—copies of which had been sent to the two former Attorney-Generals in the House, Simon and Sir Douglas Hogg—and other statements made by Sir Henry (now Lord) Slessor, the Solicitor-General, by Sir Archibald Bodkin, the Director of Public Prosecutions, and by Sir Guy Stephenson, the Assistant Director. Moreover, he intended to read the instructions which had been given in writing to Mr. Travers Humphreys, even though this was not in accordance with precedent. Before reading these documents, however, he would read a letter sent about

another case in 1919 by Sir Gordon Hewart, then Solicitor-General in the Coalition Government, to the Director of Public Prosecutions:

MY DEAR DIRECTOR,

There can be no doubt, I think, that this speech is seditious and that a prosecution may properly follow; but it appears to me that the real question is one of policy, and, therefore, is a question in the first instance for the Home Secretary and the Minister of Labour.

After which (Sir Patrick related) the Public Prosecutor had been informed by the Coalition Minister of Labour that the matter had been considered by the Cabinet and that instructions would follow from the Home Secretary. This, Sir Patrick claimed, showed that it had been the practice in the past for Attorney-Generals to consult the Cabinet about the advisability of instituting political prosecutions.

He now turned to the Campbell case, beginning by reading a statement by the Director of Public Prosecutions that the latter visited him on July 31, showed him the article in the *Workers' Weekly*, and agreed with him that the person responsible for the article, presumably the editor, should be prosecuted; it was agreed between them also that police enquiries should be made as to who was the responsible person. On August 4, Sir Patrick continued, the Home Secretary (Arthur Henderson) mentioned to him that he had received a letter about the proposed prosecution and had sent it on to the Public Prosecutor; Sir Patrick thereupon rang up Sir Archibald Bodkin for news, and received a letter next day, August 6, that a warrant had been granted for the arrest of "one John Campbell," who had accepted responsibility for the offending article. This was the first time that Campbell's name was mentioned. When, however, several questions were asked that day in the House about the matter, "I thought at once that there were two things I must do. One was to have my view confirmed that this article was in itself a breach of the law, and, secondly, I must know if there were any other facts that I ought to know about Campbell." From the remarks made in the House he concluded that Mr. Maxton

might have such information, and he sent for him; Mr. Maxton had then said that it was a mistake to suppose that Campbell was anything but the temporary editor of the paper, and added some details about Campbell's splendid War record. On the strength of this, Sir Patrick said, he felt from his experience as a defending counsel in many trials that it would not be good tactics to put a cripple like Campbell in the box and to present him to a jury as a dangerous Communist.

A Tory Member interrupted with the pertinent cry, "He pleaded guilty!" but Sir Patrick disregarded this. "What would anybody have done?" he went on. "Wouldn't they have said at once that the thing to do was to send for the Public Prosecutor to see whether it was true?" This Sir Patrick said he did, and he also asked the Solicitor-General to see him. He now read from another document in his hand, the Solicitor-General's statement. The essence of this was that, if Mr. Maxton's statement were true, Sir Henry Slessor agreed with the speaker that "it would very gravely affect the probable result of the trial and . . . an unsuccessful prosecution would be disastrous in the public interest." Then, said Sir Patrick:

I at once sent for the Director of Public Prosecutions, as it was, in my opinion, a matter in which the public interest was involved; and I said he must come to the Prime Minister's room so that he could tell us both what he knew about this man [Campbell] and whether what I had been told was true.

At this Simon, who was to speak next, made a note.

Continuing, Sir Patrick said that the Prime Minister was not in his room when the Assistant Director, Sir Guy Stephenson, arrived (the Director having left London) and confirmed all that Mr. Maxton had said. Sir Patrick had then expressed his view that the prosecution ought not to be allowed to go on; "We should only be advertising Communism and running a grave risk of an unsuccessful prosecution." The Assistant Director had obligingly called his attention to a case in which another Attorney-General had withdrawn a

prosecution for sedition by offering no evidence, a precedent which, he suggested, might be followed in the present instance. [Everybody in the House knew that this referred to Lord Birkenhead, who had been vigorously attacking Sir Patrick and the Government in the Press over the Campbell case.]

"All that the Prime Minister, when he came into the room, had to do with it was that he was certainly at least as strong in his view as I was, that he took the view that prosecution was ill-advised from the beginning, and he put the blame on the Director. I at once stopped that. I said I could not allow any blame to be put on the Director, and I said the responsibility was entirely mine."

The Assistant Director's statement, which Sir Patrick now read, confirmed all this, but added a remark which several would-be speakers were quick to note, "On the Prime Minister entering the room, he said the Home Secretary had told him he had not authorised the prosecution, and asked me how it came to be done, whereupon the Attorney-General told the Prime Minister that . . . the sole responsibility was with him, the Attorney-General." The statement now for the first time named Lord Birkenhead, who, as Attorney-General in 1917, "had himself appeared at Bow Street and withdrawn the prosecution against five defendants, in which the defendant had given an undertaking." Sir Patrick added that he entirely agreed with the action Lord Birkenhead had then taken,*

* "In May of that year [1917] a group of shop stewards had endeavoured to hinder the production of war materials. Sir Charles Mathews, the Director of Public Prosecutions, informed Sir Frederick Smith (as he then was) that the War Cabinet had passed a resolution directing a prosecution. Smith indignantly pointed out that no Cabinet has the right to order the Law Officers to take or suspend action, and demanded that the instruction to prosecute should be withdrawn and the minute excised. The Cabinet at once admitted its mistake and cancelled its resolution. When Smith inaugurated the prosecution, it was after full consideration of the papers involved and on his own responsibility. The case came into Court, and Smith told the counsel for the accused that, if they would give an undertaking to return at once to work, he would withdraw the prosecution and not press for a penalty. The prisoners gave this undertaking and Smith, considering the interest of the country thus better served than by having the men sent to gaol, withdrew the prosecution."—*Lord Birkenhead*, by the present writer (fifth edition [Newnes, 1936], pp. 165-6).

but "I shudder to think what my position would have been if I had done the same." And so, he argued, when he left the Prime Minister's room the only question left for discussion with the Public Prosecutor was whether Sir Patrick should appear in person at Bow Street to withdraw the charge or whether this task should be deputed to Mr. Travers Humphreys to avoid too much publicity.

Then the Cabinet had met, and Sir Patrick (who was not a member of it) was asked to attend. Unfortunately it was not permitted to disclose what took place at Cabinet meetings, though, he said, he would have welcomed the opportunity to say what happened: "All I can say is that I left that Cabinet meeting with a decision at which I had arrived interfered with by nobody," and he thought fit to tell the news to Mr. Scurr, who had threatened to raise the matter later in the evening; but he told nobody else, except, of course, when he recalled Sir Archibald Bodkin to London next day in connection with the withdrawal, for they had to prepare an explanation for the magistrate. This explanation (Sir Patrick quoted from Sir Archibald's statement) was that Campbell was only a temporary editor, had not been shown to have composed the article, had never been previously charged, and had an excellent military record. If, as now appeared and Sir Patrick admitted, some of these statements were inaccurate, they were at least based on information given to him in good faith by the Department of Public Prosecutions. The day after the interview with Sir Archibald Bodkin, on August 8, the speaker went abroad, came back to London only for a few hours for domestic reasons on the 12th, and then returned to France; his absence from the country was why he did not pay sufficient attention to what Mr. Travers Humphreys said in court on the 13th.

He did, however, meet Mr. Humphreys on the 12th, but not at his own request. Mr. Humphreys seemed unhappy about the instructions he had received and wished to alter them; discovering that Sir Patrick was passing through London, he traced him to a club of which they were both members, and (again Sir Patrick Hastings read from a written statement) discussed with him the grounds which, it had been

suggested, he was to put before the court as reasons for withdrawing the charge. They decided at last to strike them out, and instead to offer the explanation originally suggested by Mr. Maxton—namely, that the contents of the article had been misunderstood. The expression "*It has been represented*" was Mr. Humphreys's own, said his statement, and referred to representations which had been made—by Mr. Maxton and others—in the House of Commons and at public meetings.

Having thus put forward his version of the whole affair, Sir Patrick again asked the House what else he could have done in the circumstances. He said he was very anxious to give a fuller explanation, if one were required, but he really could not see that there was much more to it. Perhaps he had made a mistake, either in instituting the prosecution or later in withdrawing it, but surely there was no need to have a vote of censure just because a Minister had made a mistake?

He sat down, loudly cheered by the Labour Party. His speech was in many ways an excellent effort, and his supporters felt that he had said the last word on the subject. Unfortunately for them there were one or two vital points which they had overlooked, and Simon, who now rose to speak, quickly threw a different light on the matter.

He began by reading his amendment for the appointment of a Select Committee, "to investigate and report upon the circumstances leading up to the withdrawal of the proceedings recently instituted by the Director of Public Prosecutions against Mr. Campbell." It seemed to him, he went on, that the Attorney-General had in parts of his speech rather forgotten the essential question involved:

In his speech from first to last, with a generosity for which his political colleagues ought to be eternally thankful to him, he has spoken as though the question raised here was nothing more than some departmental issue affecting himself and the discharge of his own office. That, however, is not the serious question at all. The serious question here is the question of responsibility of political Ministers. It is only a week ago that, in answer

to questions put in this House, the Prime Minister and the Attorney-General were so unfortunate as to convey to the House and to the country the impression that the political Ministers knew nothing of the matter, heard nothing of the matter, and that from first to last it was simply a matter inside the Attorney-General's department. That is the impression which these two Ministers most unfortunately conveyed. So far from wishing to speak hardly of the Attorney-General or of the way in which he has endeavoured to bear the brunt of this, I want to make it plain at once that the need for enquiry is the need to discover to what extent his political superiors made any attempt to influence his mind.

Sir Patrick had several times asked if there was any other point on which he could inform the House. "Yes, there is," said Simon. The Prime Minister had said at question-time a few hours previously that, after the matter was brought to his attention, he made enquiries, saw the Attorney-General, and expressed a view about the prosecution; but so far neither the Prime Minister nor Sir Patrick Hastings had given any clear account of this part of the episode. The debate must not be turned into a discussion of the Attorney-General's professional conduct; the all-important question, Simon said, was what his Labour colleagues had done and said after the matter first came to the Prime Minister's knowledge. This point had been left very obscure. Sir Patrick had told them that, after Mr. Scurr had threatened to raise the matter in debate, he (Sir Patrick) sent for Sir Archibald Bodkin to come to the Prime Minister's room. Simon commented:

I am an old Attorney-General, and I know something of the sacredness of the Prime Minister's room; and no one is going to persuade me, and no ex-Attorney-General will ever be persuaded, that, if an Attorney-General telephoned to the Director of Public Prosecutions to come to the Prime Minister's room, it was because the Prime Minister had said that he was not to see him! I want to know from the Prime Minister whether he had said that he wanted to see the Director of Public Prosecutions,

what he wanted to see him for, and what he said to him when he did see him.

Until this was cleared up, Simon insisted, it was idle to pretend that the heart of the matter had been probed. After all, for several weeks a great cloud of suspicion had arisen in the Press and in the minds of the public that the Cabinet had surrendered under pressure from extreme elements; yet, even when the House of Commons had re-assembled and the Prime Minister and the Attorney-General had both made statements, nothing had been said to destroy this suspicion. There never was, therefore, a more obvious case for an enquiry.

Having thus disposed of practically the whole of Sir Patrick's speech, Simon made another thrust:

Let me point out a significance of dates which, perhaps, has not been quite apprehended by every Member of the House. These two dates which come into this story—Tuesday, August 5, and Wednesday, August 6—are two dates of some little significance in quite another connection. It was on Tuesday, August 5, that the Foreign Office, under the instructions of the Prime Minister, issued the official announcement that there was a rupture of negotiations with the Soviet Delegation and that no Treaty with the Russians would be signed. It was on the night of August 5, going well on into the small hours of August 6, that certain Members of this House, including some who are alleged to have interfered in connection with this Communist prosecution, were engaged in endeavouring to induce the Government none the less to come to terms. The very day—namely, Wednesday, August 6—on which this question was put to the Attorney-General was the day when the Prime Minister was waiting to have the announcement made that the Soviet Treaty would be signed.

As the Attorney-General has not told us, and as, when I invited him, the Prime Minister refused to tell me, what was the opinion which he expressed about the prosecution, *I* will venture a view. Did the Prime Minister say this to the Attorney-General—did he say,

"Well done, good and faithful colleague. I satisfied the Communists and agreed to a Treaty with Russia yesterday, after announcing the day before that I would not do it, and I now find that you, at exactly the same moment, are engaged in prosecuting the very people with whom I am trying to arrive at accommodation"?

There was a roar of protest at this sarcasm from the Socialist benches, and the Speaker had to call them to order. Imperturbably Simon went on to say that it was no small matter for a busy Prime Minister to concern himself with a prosecution initiated by one of his law officers.

"Assuming he did so," shouted a Labour Member.

"All I know is," Simon retorted, "that the Prime Minister has already stated to-day that he did so, and that he expressed a view about it."

This incident, he pointed out, took place immediately after question time and before Sir Patrick sent for his advisers; within another two hours the Attorney-General was called before the Cabinet to report about the Campbell case, at the very moment when Russian matters were being discussed in the House:

We are asked to believe that twice over the Prime Minister had his political colleagues concern themselves in this matter, and yet that no political considerations had anything in the world to do with it.

Moreover, he went on, until Sir Patrick's speech everybody had supposed that the withdrawal of the prosecution had been a deliberate and fully considered action, but it now turned out that "the Attorney-General, after two interviews with the prime Minister and his political colleagues, was in a position to give the tip to two or three Members sitting behind him that it would be all right." What, then, was the use of the Prime Minister's pretending that the decision was one which concerned the Attorney-General alone?

This is not the Attorney-General's matter. It is a matter in which it is essential in the interests of public

justice that an inquiry should be made to ascertain to what extent political Ministers interfered, and, unless that is done, the conduct of Ministers themselves has brought the administration of the law into suspicion and contempt. It is not enough for the Attorney-General to lay his hand on his heart and tell us that we now know all about it. I have known the Attorney-General so long and have had so much to do with him that I should be the very last man to cast injurious aspersions. I believe it is his political colleagues who really ought to be brought to book.

Simon added that he did not wish, as the Tories did, to pronounce censure until all the facts were known; but it was no use pretending that the Attorney-General, by reading a number of statements which he had collected from a number of officials, had fulfilled the same function as the impartial enquiry for which the Liberal Party was pressing. Sir Patrick, he persisted, seemed to think that the only question was whether he had been wise to initiate the prosecution, whether he had been free to change his mind, and whether his second thoughts had been better than his first. This was not the crucial point at all, but something might at least be said about it: it was not, as a rule, very wise to institute proceedings because of wild statements made by obscure newspapers, but it was one thing to exercise discretion in bringing proceedings, and quite another thing to drop proceedings unconditionally after they had been brought. And Simon pointed out that Lord Birkenhead, in the case to which Sir Patrick had referred, withdrew the prosecution only when he received a written pledge from the accused that they would not repeat their offence, whereas in the present instance the *Workers' Weekly* had not only not been asked for any such pledge, but had since published an even more inflammatory article on the same lines. The unconditional withdrawal of so serious a charge was wholly unprecedented. Public opinion feared that the prosecution of Campbell had been withdrawn because of an outcry and protest from a section of the House:

The handling of the matter has left people all over the country gravely disturbed as to whether or not there has not here been a most improper attempt to influence the ordinary course of public justice.

He went on to draw comparisons between what are called private prosecutions and public prosecutions. Nearly all prosecutions, he explained, belong to the former class; and the law does not allow a private prosecutor to withdraw a prosecution unless and until the Public Prosecutor is satisfied that the desire to withdraw is not due to a secret compromise, to blackmail or to threats. On the other hand, the law allows the Attorney-General and the Director of Public Prosecutions free choice to do as they think fit, but

it does so upon the plain basis that there shall not be interviews between the Prime Minister and the Attorney-General asking, "What is the meaning of this?" or directions telephoned to the Director of Public Prosecutions—"I want to see him in the Prime Minister's room"—or a view expressed by the Prime Minister to the Attorney-General which he did not feel able to tell the House when he was asked this afternoon, and a report on all these matters to a Cabinet or a conference of Ministers.

Simon repudiated the suggestion that the episode could be disposed of by highly technical comparisons between what Sir Patrick and previous Attorney-Generals had done in certain circumstances. "There is not a lawyer in the House, there is not an honest man in the country——"

There was a guffaw at this from some of the angry Socialists. "I know," said Simon icily, "that some people think lawyers are merely word-twisters. Is that what you think of your Attorney-General? I think better of him, and I am not prepared to see a professional man, who is obviously endeavouring to take upon himself a burden which ought to be borne by his colleagues, simply thrown to the censure of the House without an investigation."

Having thus silenced the interrupters, he returned to his

argument that there was no one, lawyer or laymen, who would not rejoice if, as the result of a full investigation into the circumstances under discussion, it could be shown that no improper political influence or pressure had been used. But if the Government resisted the demand for such an enquiry and preferred a General Election to it, then, Simon ended his speech, they

would be in the position of the man who is asked to produce a document from his desk, but prefers to burn down his house rather than produce it. Whether it is a man or a Government who does that, it is equally obvious in either case that they have something to hide.

§

This speech forced the Government into the open: either the Prime Minister, who was about to speak, must reveal the facts which had so far been slurred over, or, it was now clear, the Conservatives and Liberals would unite in voting for a public enquiry. Mr. MacDonald certainly was not prepared to speak out. He characteristically said that he would, but, equally characteristically, he did not.

He again denied the charge that he had wished the prosecution withdrawn for fear of being put in the witness-box and examined by the defence about his own utterances in the past. As for Simon's suggestion—"it is not an allegation, though it is one of those twining, twisting, sinuous things, and supported by not a particle of evidence"—that the conduct of the Campbell case had had anything to do with the Russian negotiations,

I will give the House this categorical assurance if it wants it, if it really was in the least impressed by that pretty little old-maidish discovery, if anybody is in the least impressed, if anybody has got the least cloud of suspicion cast upon his mind by the proximity of those dates, I will tell the House this, that all that happened in connection with the Communist prosecution had just as much to do with the decision on the Soviet Treaty as the man in the moon.

He went on to say that the only thing which had concerned him in the whole business was the importance of not giving a gratuitous advertisement to the Communists. Simon had insinuated that he (the Prime Minister) had said something which caused Sir Patrick Hastings to change his mind; but it was the information of the Assistant Director of Public Prosecutions which was the cause.

"May I make it quite clear what I want to know?" Simon interrupted. "Had the Prime Minister taken any part at all in asking that the Director of Public Prosecutions or his deputy should come to his room; and had he said that he was to come to his room? How did it come about on this very important occasion that the Prime Minister should be seeing them, unless he had been speaking to the Attorney-General?"

Mr. MacDonald said he was coming to this. "I am not going to allow the right hon. gentleman to evade the point. I want to finish this point first and show exactly what the state of the Attorney-General's mind was when he saw me first of all. The Attorney-General said that he had come to the conclusion that the prosecution ought to be withdrawn." The only reason, he added, why he sent for Sir Patrick at all was to discover what the whole thing was about.

After this Mr. MacDonald explained his objection to a Select Committee. Apart from the slur on himself and the Attorney-General implicit in its appointment, it would certainly be a biased and partisan body, and the Government, as a minority party in it—Select Committees are appointed in accordance with the proportional strength of the various groups in the House—would be condemned from the outset. Then, strangely enough, Mr. MacDonald reverted to the Cabinet meeting at which the Campbell case was discussed:

The one concern which we had was whether this prosecution advanced the interests of the State or not. But even then we issued no instructions. The views expressed, the many views expressed, for the consideration of the officers with technical knowledge and with the responsibilities of office put the burden of a final decision

upon them. As I have said already, before the consultations took place—they were not even consultations—before the conversations took place, the decision had practically been come to, and no change took place.

Readers may ponder the significance of the word “practically” in this sentence. If it meant anything—one never knew with Mr. MacDonald—it weakened the force of his previous statement that the Attorney-General, when he came to the Prime Minister’s room some little time before the Cabinet meeting, had already reached the conclusion that the prosecution should be withdrawn. Indeed, Sir Leslie Scott, pressing the charge against the Government later in the debate, quoted from the statement of Sir Guy Stephenson that it was not *until* Mr. MacDonald had expressed the opinion that proceedings would advertise the Communists and do more harm than good, that Sir Patrick Hastings came to the conclusion that the prosecution ought to be withdrawn.

Mr. Asquith followed the Prime Minister. The main point in his speech was that it was incorrect to suppose that the findings of a Select Committee would be partisan; he recalled that the Select Committee on the Marconi scandal before the War had unanimously absolved the Liberal Ministers concerned. To avoid even a semblance of a packed Committee on the present incident, however, the Liberal Party was willing to forgo representation on it.

As the debate continued, T. P. O’Connor, the Irish Nationalist M.P. for Liverpool, suggested that the House should adjourn, because “to ask the country to have a General Election on this miserable tempest in the tiniest little teapot ever introduced into political life is madness,” a phrase which gave Mr. Baldwin an opportunity to joke ponderously about the effect of teapots in Boston Harbour and the more recent Teapot Dome scandals in America. Sir Douglas Hogg made a direct attack on the part which Arthur Henderson, the Home Secretary, and the leading political tactician in the Government, was supposed by rumour to have taken in the matter:

It is a remarkable fact that we have never heard from anybody yet how it was that the Home Secretary and the Prime Minister, after sending for the Attorney, had been in consultation as to who authorised this prosecution. We have had no statement from the Home Secretary. We understood that he had come back from Geneva especially about this matter, but we have not heard him this evening and we do not know who approached him or what pressure was put upon him. We do not know what passed between him and the Prime Minister; we only know that the Prime Minister comes into the room protesting that the Home Secretary had never authorised the prosecution, and demanding to know how it came to be instituted.

Mr. Henderson was not to be drawn and left it to his colleague, Mr. J. H. Thomas, to offer a characteristically clever reply for the Government. Nor did any of the Left Wingers accept Sir Robert Horne's invitation to deny that they had brought pressure on the Cabinet to withdraw the charges against Campbell. Commander Kenworthy (now Lord Strabolgi) made a praiseworthy attempt to "talk out" the motion, but, a few minutes before 11 o'clock, Simon and Sir Robert Horne asked that the question be put to the House.

The Speaker agreed, and Members trooped into the division lobbies. The Conservatives for obvious reasons voted against their original motion and joined the Liberals to support Simon's amendment. Amid angry, excited scenes the Government was defeated by 364 votes to 198. Rather than face the Select Committee, Mr. MacDonald carried out his threat to resign and go to the country.*

Next morning Simon sent the following letter to *The Times*, summing up with professional skill the reasons why he had taken action against the Government. It was published on October 10, 1924.

* Mr. Allen Hutt is pleased to explain Mr. MacDonald's behaviour in this crisis as "according singularly well with his desire to insure himself against the risks and responsibilities of continued power by making certain his defeat and return to Opposition" (*op. cit.*, p. 98). Once again one may marvel at the tortuous workings of the Communist mind.

SIR,

The complications of a long and intricate debate and the decision of the Labour Government to plunge the country into a General Election as the only way of avoiding impartial inquiry make it difficult for the public to appreciate with precision the salient features of the Campbell case and justify a simple summary.

1. A fortnight ago I made a speech at Cleckheaton in which I called attention to the statement made on August 13 at Bow Street by Mr. Travers Humphreys, the Crown prosecutor, when withdrawing the proceedings against Mr. Campbell for incitement to mutiny, to the effect that the ground for this withdrawal was that "it was represented" that the article complained of had an innocent character. I asked who had made these representations and contrasted this explanation with the repeated and detailed assertions subsequently made by Mr. Campbell and his friends repudiating any such explanation and asserting that the prosecution was withdrawn after severe political pressure had been applied by Mr. George Lansbury and other Labour Members.

2. A week ago, when Parliament reassembled, the Government could no longer continue their policy of silence on the matter, and in reply to questions Ministers conveyed the distinct impression to the House and the country that the matter from first to last had been handled by the Attorney-General, within whose jurisdiction it exclusively lies, and that his political colleagues in general, and the Prime Minister in particular, had nothing to do with it.

3. I therefore gave private notice of a question to the Prime Minister (which the Speaker in his discretion did not permit me to put) asking whether after the prosecution was instituted and before it was withdrawn the subject was not before the Prime Minister or his Cabinet colleagues, and whether the Prime Minister had not had personal communication with the Director of Public Prosecutions about it. The veil was not lifted until yesterday, when the Prime Minister apologised for conveying

the mistaken impression by his answer a week ago, and it transpired that after the protest on August 6 of Mr. Scurr, Mr. Maxton, and others, and the threat by another supporter of the Government that such prosecutions would lose the Prime Minister half his party, Mr. Ramsay MacDonald had personally concerned himself in the matter, notwithstanding his preoccupation with immensely important and pressing problems of foreign affairs, had had the Director of Public Prosecutions in his (the Prime Minister's) own room at the House of Commons, and had summoned the Attorney-General to a Cabinet meeting about it. All this within a couple of hours of the protest of his back benchers!

4. It further appears that once the Labour protest had been made matters travelled so fast that the Attorney-General was in a position to give private information to Mr. Scurr that the prosecution would be withdrawn, even before the debate which began about 7 o'clock the same evening had proceeded far enough for the matter to be raised in further discussion as Mr. Scurr had announced and intended.

5. So sudden a change of intention was certainly not what was conveyed to the House of Commons in Ministerial answers a week ago. Mr. Scurr had the comforting assurance on August 7, but Mr. Travers Humphreys, the Senior Counsel to the Treasury, who was conducting the proceedings, only received instructions to withdraw the prosecution on the day before he appeared at Bow Street for the purpose on August 13. So far from making statements to the magistrate without express instructions, he insisted upon a consultation with the Attorney-General as to what reasons could be given, in the course of which he pointed out that Mr. Campbell could not apparently be said to be irresponsible or only technically concerned with the publication, but that, on the contrary, he had published the article as editor with full knowledge of its contents and had accepted full responsibility for it.

Now, Sir, I entirely dispute that the situation, of which the above are the salient features, is satisfactorily disposed

of by the Attorney-General's very full and frank statement last night. He most chivalrously endeavoured to take the whole weight of the criticism upon himself, and the Prime Minister most carefully avoided telling the House in plain terms the exact course of events. I, of course, accept the statement of the Attorney-General that he knew nothing of the widespread public criticism of the terms in which the prosecution was withdrawn until I made my speech six weeks later. But it is not every Attorney-General who enjoys the flattering but embarrassing attention of a full-length leading article such as that headed "By Whose Representation?" in *The Times* of August 15, accompanied as it was by newspaper comment in papers of every shade of opinion all over the country; and though the Attorney-General did not know this (he was abroad), his colleagues in the Government certainly did, and it is incredible that if there had been a prompt and satisfactory explanation offered the cloud of suspicion which has developed could have gathered. The question is not whether it is wise to institute such proceedings, or whether there are any circumstances in which proceedings once instituted could properly be withdrawn. The question is whether and what political pressure was used. Mr. George Lansbury sat silent throughout last night's debate. *No one of the members whose names had been mentioned as bringing pressure on the Government intervened in the debate at all, and no statement of what any one of them could say was tendered by the Attorney-General or anyone else.* While, therefore, I rejoice that the Head of the Bar corrected in so manly and thorough a fashion the false impression which earlier Parliamentary statements had undoubtedly created, I venture to think that the part played by political Ministers and their supporters requires investigation, and since the Government prefer to adopt the preposterous course of forcing a General Election rather than permit any investigation to be made, the conclusion is obvious.

JOHN SIMON.

HOUSE OF COMMONS,

Oct. 9.

CHAPTER TWELVE

THE General Election at the end of October, 1924, was fought with unexampled virulence. On top of the Labour Party's other troubles came the famous Zinoviev letter, which purported to direct Communist policy in Great Britain from Russia. While this letter has frequently been described as a forgery, one must not forget that a Conservative committee of enquiry, including Sir Austen Chamberlain and Lord Birkenhead, later announced that they were satisfied of its authenticity. Simon's share in the Government's defeat in the House of Commons led to a determined assault on him in the Spen Valley; both Mr. Ramsay MacDonald and Philip Snowden went there to address meetings on behalf of his Labour opponent, Tom Myers. It was a straight fight: no Unionist or "Coalition Liberal" candidate appeared to complicate the issue. When one remembers that Simon had held the seat by only a thousand votes out of a total poll of some 33,000 eleven months before, it will be seen that his chance of retaining it seemed dubious.

Everything that innuendo and direct personal attack could accomplish was done by his opponents. Thus, Mr. MacDonald unkindly told a Cleckheaton audience, "There is no twisting, twining suavity about Tom Myers. I pitied the Spen Valley the other day in the debate when, after Patrick Hastings had made a statement so simple, so honest, so convincing that the whole House of Commons paid tribute to him by wishing the debate to stop, your representative got up, picking and bugling* and objecting, finding this little point and that other little point. I know, because of messages which have been conveyed to me, that both Bench and Bar are simply disgusted with the way Sir Patrick Hastings has been persecuted over this case." The ex-Premier prudently offered no proofs of this improbable statement, nor did he point out that a main object of Simon's speech was to show

* This is the word used by the reporter of the local paper, from whose account I take this quotation. It can hardly be correct.

that Sir Patrick was chivalrously attempting to take the blame for the alleged faults of Mr. MacDonald; but he went on to summon his audience to return Mr. Myers to Parliament as a man "straight, simple, honest, who says what he means and says it like a gentleman."

A few days later Snowden, who combined a most genial disposition in private with great bitterness in public debate, spoke in the same hall about Simon. "A very great statesman," he said, "was asked some time ago what he thought of Sir John Simon. His reply was, 'Sir John Simon is a very big man in a very little matter, but a very little man in a very big matter.'" Mr. Snowden did not proffer the name or the qualification of this critic. Incidentally, he did not explain why, if the Socialists thought the Campbell affair such "a very little matter," they resigned on it.

Simon was too important a speaker to be allowed to spend much time in his own constituency, despite the Socialist onslaught on him there, and he was the chief attraction on the platform of several other Liberals, including Major H. L. Nathan, the candidate for Whitechapel, for whom he spoke at Premierland, an East End boxing-hall. It was a stormy meeting; the Socialists were determined to howl him down. He drew first blood, however, when the opening sentence of his speech—"I am going to remind you, ladies and gentlemen, of something which was said on behalf of the Labour Party at the last General Election"—was followed by a wild shout of "It's a lie!" from a heckler. "My friend may be quite right," Simon purred, "but hadn't we better see first what it was?"

After this he was given little peace, and when he came to deal with the Zinoviev letter the uproar was appalling. To one of the ringleaders of the interruptions he suggested that "the best thing you can do is to go to Russia," and prepared to read an undisputed statement by a Soviet leader. "Surely, if you won't listen to an Englishman speaking," he suggested, "you will listen to a Russian?" Not unnaturally, even this appeal was in vain, and Simon sat down with the caustic comment that Mr. MacDonald had given way over the Russian Treaty and the Campbell case "because some of his

supporters at Westminster howled nearly as loudly as some of his supporters in Whitechapel."

He reached the Spen Valley just in time to wind up his own campaign. Once again yellow Liberalism overcame red Socialism, for the result was:

Simon	...	...	18,474
Myers	...	...	13,999
<hr/>			
Majority	...	...	4,475

In the absence of a Unionist opponent and with a slightly more numerous electorate, Simon had added not quite five thousand votes to his poll and Myers some fourteen hundred. Whatever else this meant, it was clear that, should a Conservative stand for the constituency at any subsequent election and split the anti-Socialist vote, Simon's chance of retaining the seat would be very small. Nevertheless Mr. Myers, in his speech at the declaration of the poll, complained that Simon had shown himself to be an unscrupulous opponent and that the methods and spirit which he was bringing into political affairs were losing him in the Spen Valley the respect of his opponents and the regard of his friends. In view of what Mr. Myers's leaders had said about Simon in the constituency a few days previously, the first loss did not appear likely to be heavy.

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Returning to London, where Mr. Baldwin was engaged in picking a Cabinet, Simon found himself in the courts in connection with a very sensational case, when he was briefed to defend the Midland Bank against a suit brought by Mr. Charles Ernest Robinson, a bookmaker. The amount involved was no less than £125,000, and the circumstances were as curious as could be. It appeared that a certain "Mr. A"—of whom all that was known at the trial was that he was a dark-skinned nobleman—had very generously signed a cheque for £150,000 to compensate Robinson for a slight to his honour as a husband, and that this cheque had been paid into a branch of the Midland Bank by Robinson's solicitor, William Cooper Hobbs, and most of the sum withdrawn by the latter on

presentation of a cheque ostensibly but not really signed by his client. Robinson blamed the Bank for paying out the money to Hobbs without taking proper precautions to ensure that the cheque was genuine. The Bank brutally retorted, among other things, that the sum at issue was the proceeds of a blackmailing conspiracy, and refused Robinson any compensation. He therefore sued them for negligence, and it may now be admitted that the defence was very unhappy about its legal position. Simon, however, took the line that English law is founded in the end on common sense and that, since the probability was that the money had been paid out as the result of an appalling fraud, there must be a legal way through the tangle. But he never doubted that it was going to be difficult to establish the Bank's case. As a preliminary step, he persuaded his clients to take an adventurous step which will be described later.

Lord Halsbury, K.C., opening for the plaintiff, explained that Robinson, after a varied career in Australia and England as a butcher and a bookmaker, married an attractive woman in 1908 and, though not a rich man, set up an establishment with six indoor and two outdoor servants. This extravagance soon brought him to bankruptcy, and, what was even sadder, he and his wife drifted apart. His father-in-law died during the War, however, and left a patent-medicine business, which Robinson managed for a while; but at last there was a complete breach between him and his wife. She fell in with a plausible scoundrel named Montague Noel Newton, who was responsible for her meeting "Mr. A," an Oriental prince on an educational visit to Europe. (As was afterwards revealed, he was Prince Hari Singh, then the heir-apparent to the throne of Kashmir, and to-day its Maharajah. But, as his identity was not disclosed in court, we had better continue to call him by his *nom d'amour*.) Frail Mrs. Robinson went to Paris with "Mr. A" and stayed with him at an hotel, where one morning they were discovered in bed by a man who burst into the room and whom "Mr. A" thought to be her husband, though really he was the industrious Newton. Mrs. Robinson at once returned in a flutter to England.

"Mr. A" soon learned through his aide-de-camp, an Irishman named Captain Arthur, that her husband was thinking of citing him as co-respondent in the Divorce Court. Arthur pointed out that a scandal of this kind might interfere with "Mr. A's" future career, and the latter at once wrote a cheque for £150,000 and sent it to Robinson's London solicitors, a firm named Appleton. This firm was directed by Hobbs, who, according to the plaintiff's case, behaved rather unprofessionally at this stage: he told Robinson that "Mr. A" had sent a cheque for only £25,000, paid over £21,000 of this to Mrs. Robinson (from whom £10,000 was promptly taken by Newton), and, as already mentioned, paid the rest into the Midland Bank and removed it from there in his client's name but without his client's knowledge. Lord Halsbury argued that the bank manager had erred by not making adequate enquiries about Robinson's identity and obtaining a genuine specimen of his signature; he added that the plaintiff and Mrs. Robinson had now come together again, because she was ill and in need of a husband's care.

He then called Robinson into the witness-box to corroborate this story, and Robinson did so, explaining in the course of his evidence that he had first been set on "Mr. A's" track by Newton, who told him that his wife was "going wrong in Paris with a nigger." The witness added that he saw nothing wrong in receiving money from her lover in consideration of abandoning divorce proceedings; he explained that he meant to use it to provide for her future. Altogether, Robinson presented himself as an ill-used but forgiving—not to say practical—husband.

Simon cross-examined him with the evident intention of tarnishing this picture. He began rather cruelly by asking the witness a number of questions about Mrs. Robinson's extravagant way of life; how, he asked, did Robinson suppose that his wife was able to buy dresses from Paquin, Revillon, and other expensive firms, and to stay at the Hotel Cecil in London and Claridge's in Paris when he, her husband, had gone bankrupt in 1909 and again in 1919? Simon even forced Robinson to admit that since his second bankruptcy, which was in the year when his wife met "Mr. A," he had been

supported by her. By establishing these facts, Simon brought into view the possibility that the plaintiff had himself been a party to the blackmailing of "Mr. A." This possibility he proceeded to strengthen by further questions.

Thus he made Robinson admit that he had recently been seeing a great deal of his wife and that he sometimes called at her Mayfair flat in the late afternoon, but left her to entertain a male visitor in the evening. "Will you be surprised to hear," was the next question, "that this man and Mrs. Robinson have stayed there till 2 a.m.?" Robinson said he knew nothing of this.

"You have no objection to well-connected men being there with your wife at night when you are not there?"

"Not men whom I know and approve," Robinson replied.

Leaving this line of enquiry, Simon returned to the "Mr. A" episode. "If you, as a husband, were preparing to trap your wife with 'Mr. A,' it would be just as well if you were out of the way until the trap was sprung?" he suggested. Robinson raised a laugh by answering thoughtfully, "I see your point."

Simon then asked him if he had regarded himself as an aggrieved husband when he heard the news of the discovery of his wife and "Mr. A" in bed in Paris. "Yes," Robinson answered, and was indiscreet enough to elaborate this reply by saying that he did not know for certain that they had been found in such compromising circumstances. This gave Simon an opening for an ingenious pair of questions. He suggested to Robinson that his wife, whom he said he had taken back, must surely have told him whether or not the charge was true, and, when Robinson insisted that the matter had never been discussed between them, Simon at once asked, "Isn't the reason why you never discussed this with your wife the fact that you and your wife were both in the plot?"

He followed this up by asking why Robinson had never questioned Newton about the bedroom scene: here was a husband proposing to make it the grounds for a divorce and yet he did not seek to obtain the necessary particulars! Was not this, too, Simon wished to know, because he was in the plot and because his real intention was only to *threaten*

divorce proceedings against the unhappy "Mr. A"? But the witness denied this scandalous insinuation.

At a later stage in his long cross-examination the plaintiff suddenly took a strong line with reference to Hobbs and Newton and told Simon that "the conspiracy is quite as plain to me, Sir John, as it is to you." "Yes," said Simon, "but I think there is a conspiracy within a conspiracy. First there were six rogues, of whom you were one, and then subsequently, instead of honour among thieves, the rogues fell out and you were cheated of the swag." Robinson replied bitterly that this was presumably the defence which the Bank intended to present. He was right.

Following this admission by the witness that there had been conspiracy (though, of course, Robinson denied that he was ever a consenting party to it), Simon suggested to him that the money he was now claiming really belonged to "Mr. A," because it had been obtained by trickery. Robinson replied that he intended to settle it on his wife; he did not wish to profit by her shame. But, after some other questions about the ethics of this proposal, the witness agreed that, if he was awarded the verdict, he would return the money to its rightful owner. Simon politely promised to prepare the necessary document for the transfer.

When he cross-examined Mrs. Robinson, Simon was anxious to know how Newton had managed so successfully to find her room in the Paris hotel and to enter it when she and "Mr. A" were in bed. Why was the door not locked? And why had she allowed "Mr. A" to remain under the false impression that Newton was her husband? Mrs. Robinson's replies were to the effect that she stood in such fear of Newton that her only thought was that he might betray her guilt to her husband. Then Hobbs, the solicitor, was put in the box and revealed that "Mr. A" had actually signed a second cheque for £150,000, though, somewhat belatedly taking legal advice, he had stopped payment on this.

Simon's address to the jury when he opened the defence began by asking them if anybody had ever heard of £300,000 being come by honestly in such circumstances. "Mr. A," he said, would never have parted with such a sum voluntarily;



FOUR GENERATIONS

Sir John Simon, Mrs Edwin Simon, Mrs Bickford Smith (daughter of Sir John Simon)
and her daughter Margaret

it must have been wrung out of him by fear. If so, then the money remained legally his, and Robinson had no right to come into court and demand it. He then took the adventurous step to which I have already referred: he called Newton himself as a witness, and admitted that the Bank had promised him £3,000 for coming to England to give evidence. If Carson had been available to lead the other side, I doubt if Simon would have dared to expose a witness like Newton to him; the tongue which had scarified the philanthropic Mr. Cadbury would have burnt up the self-confessedly unspeakable Newton. One can picture the line Carson would have taken: "They promised ye £3,000 to come over, didn't they? . . . Have they paid ye yet? . . . Oh, so they're not going to pay ye till ye've told the story they want ye to tell? . . ." It would have taken a very brave jury to attach any credence to Newton's story after Carson had finished with him. But there was no Carson at the Bar any longer, and Lord Halsbury, with all his gifts as an advocate, made no pretence to rival the blistering tongue of that supreme cross-examiner. So Simon, anxious that the jury should see the whole train of incidents as acts in a dramatic sequence, thought it well—and safe—to put one of the leading actors before them in the flesh.

Newton was sublime. Philosophically disdainful of the follies of mankind and tolerant of its vices, soft-spoken, self-possessed, beautifully manicured, wearing a different well-cut suit each day, he calmly described the whole affair as a put-up job between himself, the Robinsons, Hobbs, Captain Arthur, and a woman friend of Mrs. Robinson's—the "six rogues" of whom Simon had spoken. He also described the ingenious way in which Robinson had been cheated out of his fair share of the plunder by being told that "Mr. A" had paid up only £25,000. Altogether Newton's story confirmed everything that Simon had suggested, and, though Lord Halsbury had no difficulty in making Newton admit that he was an utterly disreputable person with a criminal past, his story could not be wholly upset.

The jury returned a verdict that, while there had been a conspiracy, the plaintiff had not participated in it. This

entailed a legal argument. Simon asserted that it meant that his clients, the Bank, were entitled to judgment because, since "Mr. A" had parted from the money under threats, Robinson could not succeed in any action in which he claimed that the money was his. Further, though the account with the Bank had been opened by Hobbs in the name of Robinson, anybody is allowed in this country to use any name he likes, and, since the Bank's only duty was to obey the instructions given them by the person who opened the account (which they had done), they were not responsible in any way to the real Robinson, of whom they knew nothing. Lord Darling then gave judgment for the Bank, with costs. Robinson appealed unsuccessfully, except in regard to a small item of costs, and not long afterwards Hobbs was tried for blackmailing "Mr. A," whose name was at last disclosed. Hobbs went to jail for two years, largely on Newton's evidence, but Simon was not concerned in these later proceedings.

It is noteworthy that a mere trifle in the information originally before the Bank put Simon on the track of what eventually became the centre of his case. When "Mr. A" and his party went to Paris, they stopped first at a very fashionable hotel, but soon they moved to another hotel, also expensive but not so appropriate to "Mr. A's" princely dignity. Why did they move? Simon saw the answer in a flash: the first hotel has only one main entrance, but the other has two! Thus, Newton might have found it difficult to pass the hall-porter at the first and so to make his dramatic entrance in the early morning into "Mr. A's" bedroom as an aggrieved husband, whereas, in the second hotel, he could easily pass the porter at one door by pretending that he had just gone out by the other. Simon's guess was confirmed by Newton, when the latter was traced, and so the Bank's allegations were immensely strengthened.

§

He added to his experience in the Admiralty Court when he appeared, before Lord Merrivale (then Sir Henry Duke) and the "Elder Brethren of Trinity House" who sit to assist

Judges in Admiralty cases, in a curious action concerning treasure trove in a wreck. His clients, Major Sippe and his fellow-directors in a salvage firm, claimed possession of a wrecked ship, *Tubantia*, and her cargo (which was never described in detail), and sued a rival salvage firm for trespass, asking also for an injunction to prevent the others from approaching the wreck. The defendants were the British Semper Paratus Salvage Company, personified by a Count Landi and a Mr. Greech.

Simon explained that the *Tubantia*, a 13,000-ton Dutch steamship, had been sunk in the North Sea in 1916 by a German airplane on her way from Rotterdam to South America. She lay in about a hundred feet of water, but her deck was not far below the surface. In 1922 the plaintiffs had fitted out an expedition to try to salvage part of her cargo. They found that the wreck had broken into three parts, but their divers succeeded in securing these by wire hawsers attached to buoys. They then cut a piece out of the side of one of the holds, and the divers worked on the cargo until weather conditions in the late autumn became unfavourable. In the following April, 1923, they returned and continued their operations, but three months later the defendants came on the scene and began to interfere. The plaintiffs alleged that this interference both endangered the lives of their divers and injured their legal rights in the wreck.

Simon's first task after this opening was to show that the court had jurisdiction to deal with the matter. His second was to show that his clients were in effective legal possession of the wreck, because, if they had no business to be there, it naturally followed that they had no right to object to the presence of the defendants. To prove this part of his case he had to show that the *Tubantia* was derelict, having been abandoned by her former owners, and that his clients had taken possession of her, which, he said, was proved by the fact that they had made fast to her for two summers and raised portions of her. He called witnesses to describe the finding of the wreck and what had been done to it, and to describe how the defendants had sent motor-boats in and out of the buoys and towed a grapnel behind their ship, to the

evident danger of the divers and their work. Count Landi, the principal defendant, revealed in cross-examination that the *Tubantia* was supposed to be full of gold, and he admitted that he had gone out to look for her without any authority from any owner, though he asserted that he had a letter from the British Government authorising him to search for British wrecks in the North Sea.

When Simon summed up for the plaintiffs he said that the defendants had tried in vain to assert that they had reached the wreck first, and he asked the court to award his clients damages for the various attempts to interfere with them. The legal position, he claimed, was this: Where a real owner has not got possession, the first finder who takes possession is entitled to protection by the courts to keep away everybody except the real owner. As to what "possession" means, Simon argued that depends on what is possible. You can put a watch in your pocket, you can bar a field by a gate, and when it comes to a wrecked ship you can attach hawsers to it and fasten these to your own ship or to your buoys.

For the defendants it was argued by Mr. Dunlop, K.C., that the plaintiffs had no legal possession of the wreck and therefore could not legally object to other people's encroachments; putting hawsers round parts of a wreck, he said, and buoying these up did not amount to possession of the whole. The plaintiffs, he went on, could also not claim to be in possession of the *Tubantia's* cargo, which was treasure trove and belonged to the King. who would pay salvage to the finders; the plaintiffs' claim was really only a claim to search, not a claim relating to possession of the whole ship. Mr. Dunlop's speech concluded with the remark that the Germans had made an extraordinary blunder in sinking the *Tubantia*, because two million twenty-mark pieces were believed to be on board.

The President in his judgment said that the Elder Brethren had advised him that, if he accepted the plaintiffs' evidence about the work they had carried out on the wreck, they *were* in effective possession of the whole ship; and so he held that Simon had proved this part of his case. Moreover, he

accepted Simon's claim that the court had always recognised possession by a salver. Thus Simon was home on two of his points. The next question which the President considered was whether the defendants had trespassed on the plaintiffs' possession. In his view, he said, the defendants had performed acts calculated to hamper the plaintiffs, to deprive them of their advantages, and to take possession for themselves. These acts were high-handed and deliberate, and he therefore granted Simon the desired injunction to prevent a repetition of them. He further declared that, as between the parties to the action, the plaintiffs were entitled to possession of the *Tubantia* and of her cargo; if they desired damages for the trespass, they should take appropriate steps. Thus Simon won every trick.

§

During 1925 he and his fellow-Liberals remained in the political wilderness, uneasily allied with the resentful Socialists in opposition to Mr. Baldwin's majority. We find him making speeches in the House and in the country against the modified Protectionist programme which the Government was beginning to adopt. "Mr. Baldwin has provided the latest crossword puzzle," he told an audience at Westerham on February 6, 1925, only a few hundred yards from the country house of Mr. Winston Churchill, who had now at last severed all Liberal ties and become Mr. Baldwin's Chancellor of the Exchequer. "What you are asked to discover is a word of twelve letters which means Protection—and the answer is 'Safeguarding.'"

In the following year he returned to the very centre of affairs with his famous speech in the House of Commons on the General Strike. It will be remembered that the inability of the Government to settle the dispute between the miners and the mine-owners, even by spending many millions of pounds as a subsidy to tide matters over, resulted in a deadlock and the threat of a general strike. In the first hours of Monday, May 3, it was announced that negotiations between the Government and the Trades Union Congress had broken down. The following midnight the strike began, some of the

unions coming out at once, with others following at intervals on instructions from their leaders. It is true that the breakdown of negotiations was a blunder, for the stoppage at the *Daily Mail* offices was unauthorised, but, if trouble had been averted then, it would almost certainly have recurred a few months later. Except in some isolated instances there was little enthusiasm among the strikers; the Communist belief that "a vast army had entered battle with incomparable *élan*, but at its head stood generals anxious, above all, to avoid decisive actions, fearful of victory, concerned to bring the war to an end on any terms,"* is not borne out by general opinion. Once, therefore, it was clear that the Government had the situation in hand and that, whatever happened, the strikers could not win, the way was open for some decisive intervention which would bring the crisis to an end. This was provided by Simon in a speech in the House of Commons on May 6, three days after the stoppage began.

Rising at a late hour to take part in a debate which had so far served only to darken counsel, he threw a bombshell into the House by stating that, in his view, the "General Strike" was a misnomer; it was not a strike at all. The decision of the Trades Union Congress to call out all the unions affiliated to it was, in his opinion, an unlawful act differing in kind as well as in degree from the usual lawful strike, because it was an attempt to force, not employers, but the public, Parliament, and the Government to do something. Therefore—

Every workman who was bound by a contract to give notice before he left work, and who, in view of that decision [of the Congress], has either chosen of his free will or has felt compelled to come out by leaving his employment without proper notice, has broken the law. He has broken the law just as much as the coal-owners would have broken the law if they had failed to give due notice to terminate the existing engagements of their men, and had attempted to turn them off on May 1 without any warning. There is no difference whatever

in this matter between the law as it applies to the workman and the law as it applies to the employer.

I am not saying this with the slightest desire to blame or praise, but it would be lamentable if the working-classes of this country go on with this business without understanding that they are taking part in a novel and an utterly illegal proceeding. It is this feature of the General Strike that constitutes its novelty.

In the case, for example, of the railwaymen, most of whom served under contracts which required that due notice to quit should be given on either side—

Every railwayman in that position who is now out in disregard of the contract of his employment is himself personally liable to be sued in the county court for damages.

Moreover—

Every Trades Union leader who has advised and promoted this course of action is liable in damages to the uttermost farthing of his personal possessions. . . . I am not saying for a moment that action of this sort will be taken; I know nothing about it. But I point it out because of the fact that it might be taken as the plainest possible proof to any honest citizen that what we are faced with now is something quite different in character from any lawful strike.

Further, he said, no Trades Union could threaten to deprive any member of the union of his benefits for refusing to obey its orders to take part in the present stoppage, because it was illegal. This was the vitally important point of Simon's speech. In the remainder he gave his reasons for distinguishing the present stoppage from normal strikes, in regard to which, by virtue of the Trade Disputes Act of 1906—on which, as we know, he had made his first two Parliamentary speeches—no damages could be recovered from Trades Union officials; and he appealed to the men's leaders and the Government to come to terms.

Four days later Sir Henry Slesser made a reply to Simon's

argument in the House, but without giving him the usual notice. As a result Simon was not there to hear the speech, but, as soon as he learned what Sir Henry had said, he retaliated. He began pleasantly by saying:

I think it was a little unfortunate that, though I was in the House within two or three minutes of his [Sir Henry's] rising, he did not inform me of his intention. . . . I quite understand that the hon. and learned gentleman might have been tempted to make a speech without giving me any notice, because he was criticising a speech of mine in which I had pointed out that there were cases in which the failure to give notice exposed people to actions for damages. It may have been that the hon. and learned gentleman was anxious to give an illustration of a case where the failure to give notice does *not* expose anyone to an action for damages!

Simon remarked also that, during his own speech the other night—

There appeared to be a kind of General Strike proclaimed on the Labour benches. Not only did the Labour Members as a body strike work, but three or four of them who were prepared to remain were “fetched out”; they were peacefully persuaded by their pickets to leave the Chamber.

Becoming more serious, Simon went on to elaborate his points against the legality of the General Strike, insisting, above all, that “I am not spending my time in discussing some miserable legal technicality.” He accepted, he said, that the stoppage had its origin in a trade dispute between the miners and their employers, but “once you proclaim a General Strike, you are, as a matter of fact, starting a movement of a perfectly different and of a wholly unconstitutional and unlawful character.”

“No,” shouted a defiant Socialist.

But Simon gave his reasons. The Trade Disputes Act of 1906 had been carried through the Commons on its third reading without a hostile vote, and obviously this would not

have happened if anybody had imagined that it legalised a General Strike. Sir Henry Slessor had said that this was a matter for decision by Judges, not by members of the public. Very well, said Simon, and he referred to a judgment given that morning by Mr. Justice Astbury on this very point, when granting an injunction to the executive of the National Sailors' and Firemen's Union to stop certain branch officials from calling on members to strike. "No trade dispute has been alleged or shown to exist in any of the unions affected except in the miners' case," Mr. Justice Astbury had said, "and no trade dispute does or can exist between the Trades Union Congress on the one hand and the Government on the other. . . . The [strike] orders of the Trades Union Congress are therefore illegal." Here, said Simon, was the judicial authority for which Sir Henry had asked.

Perhaps, Simon added with a smile, Sir Henry would attach importance to an extract from a textbook of repute, *Trade Union Law*, which had been written only four years previously. The author, speaking of a strike called for political objects, gave his opinion that "I have very little doubt that such a strike would *not* be covered by the words in the definition of the Trade Disputes Act." And the author of this book, the speaker revealed, was Sir Henry Slessor himself!

Again I shall limit my quotations from Simon's speech to its most significant feature, the legal aspect of the General Strike.* It has been argued, however, and by others besides Lord Slessor, that Simon's view of the law in the matter was inaccurate, but, as he pointed out later in a note to the published speeches, while the 1906 Act certainly provided that an action done by a person in contemplation of a trade dispute shall not be actionable on the ground that it induces some other person to break a contract of employment, yet, if the action were done in contemplation of any other purpose, the exemption would not apply; and the General Strike, being an offence against the State, was not a trade dispute in the sense of the Act. It seems clear that Simon's reading

* The whole of the speech, as of its predecessor and of one to which I shall shortly turn, may be found in his *Three Speeches on the General Strike* (Macmillan, 1926), together with the full text of Mr. Justice Astbury's judgment and other matters.

of the law was correct. It is no argument against his case that the Government introduced a new Trades Disputes Bill in the following year which specifically stated the illegality of a General Strike, for, apart from this, the new Bill included several other features: for example, the substitution of "contracting in" for Trades Union political levies in place of "contracting out," and the prohibition of political activity by Civil Servants' associations. On the other hand, I should not care to affirm that, had the stoppage of May, 1926, been more popular among those taking part in it or had it at any time showed the slightest sign of being successful, Simon's argument—whether generally accepted or not—would have had the overwhelming effect it did; there are times when the law ceases to frighten. But, in the actual circumstances of the moment, there can be no doubt that his first speech struck at the very heart of the stoppage and was a decisive factor in bringing about its end.

He went up to Cleckheaton a week later and, to an audience which included a number of men who had taken part in the strike, repeated his arguments in even simpler terms.

Don't imagine [he said] that the fundamental difference between the General Strike and a lawful strike depends simply on the question of the failure to give notice. The real distinction lies deeper. . . . A trade dispute, properly understood, on the side of the workmen is a dispute in which they combine to try to make their employers do something. But a General Strike, like the one we have just passed through, is an attempt to make the community, the people, the Members of Parliament, the House of Commons, the Government, do something. There is a legitimate way of doing this; I have not fought four elections in the Spen Valley without knowing the way it ought to be done. . . . The question really is whether the success of the General Strike, if it succeeded, does not necessarily involve a substitution of the strikers' will for the will of Parliament.

Therefore, Simon admitted, he, like the overwhelming mass of people in the country, had wished the General Strike to

fail; this wish, however, had not been due to any hostile feelings towards Trades Unionism, but, on the contrary, to his desire to save Trades Unionism from a fatal error.

§

Work in the courts was less disturbed by the strike than most other sides of British life, and in July, 1926, not many days after the speeches quoted above, we find him appearing for a London club, the Bath Club, in a case brought against it by Captain Peter Wright, who claimed damages for wrongful expulsion. The trial was before Mr. Justice Horridge and a special jury.

It appeared that in August of the previous year the secretary of the club, Mr. Wilson Taylor, wrote to Captain Wright, in accordance with the instructions of the committee, recommending him to resign his membership. At that stage the plaintiff had not been invited to attend any enquiry into his conduct, nor had he been informed that his behaviour was the subject of complaint or asked to explain it. Two months later a letter was sent to him saying that he had been expelled from the Bath Club by the committee.

The defence was that the expulsion was justified because the plaintiff had published a book gravely reflecting on the moral character of Gladstone, whose son was a member of the club. The defendants further pleaded that Captain Wright had corresponded through the Press with Lord Gladstone on club notepaper, thereby bringing the club into the papers; that Lord Gladstone had written Captain Wright a letter, which also was published, calling him a liar and a coward, and that the plaintiff's reply to this, written also on club notepaper, announced his refusal to bring an action against Lord Gladstone. The committee, believing that the plaintiff's failure to take steps against Lord Gladstone showed that he admitted his conduct as alleged, were of opinion that his conduct was injurious to the character and interests of the Bath Club, and they denied, therefore, that his expulsion was illegal or contrary to natural justice.

Captain Wright's case was opened by Mr. St. John Field, who began by explaining who his client was, and accounted

for his slight foreign accent as the result of spending his early days in France. He mentioned that Captain Wright was a scholar of Balliol and had been called to the Bar, although, never having practised, he was not to be regarded as a lawyer: his present profession was that of journalist and author. The book mentioned, *Portraits and Criticisms*, had been published in 1925 and contained a scurrilous accusation—which, the publishers stated, was not in the original manuscript accepted by them—that Gladstone, despite his public professions of morality, was accustomed “in private [to] pursue and possess every sort of woman.” After reading this, counsel continued, Lord Gladstone and his brother, Mr. H. N. Gladstone, wrote to Captain Wright at the club: “Your garbage about Mr. Gladstone in *Portraits and Criticisms* has come to our knowledge. You are a liar. Because you slander a dead man, you are a coward. Because you think that the public will accept invention from such as you, you are a fool.”

Captain Wright answered, amplifying his original attack, and sent both letters to the newspapers. Later Lord Gladstone wrote again, asking in effect for proceedings to be taken against him and saying, “The public will form its own judgment if you decline to take the only course consistent with honour and truth—an action against us in a Court of Law.” The explanation of this letter, by the way, is that libel of a dead man is not actionable in this country, and so Lord Gladstone could not bring a libel action as Gladstone’s son in respect of the book; since, therefore, he could not be plaintiff, he hoped to ventilate his grievance by provoking Captain Wright into suing him for the libel contained in his letter. Captain Wright, however, considered that there had been no “publication” by Lord Gladstone of the deliberately offensive letter—and, if there is no publication, one has no grounds for a libel action.

The next incident was a letter from the secretary of the club objecting to Captain Wright’s use of its notepaper in his correspondence with Lord Gladstone. The only relevant Bath Club rule, however, was one prohibiting members from using its address for advertisements. Various letters passed

after this between members and officials of the club, and eventually the plaintiff was informed of, but not invited to, the committee meeting which recommended his expulsion.

Having heard Mr. Field's opening, the Judge explained that "the issue for the jury is simply whether Captain Wright was condemned unheard. If so, there is no defence to this action." For it is a principle of British justice that no one shall be condemned unheard.

The plaintiff then went into the box and told how, on receipt of the letter objecting to his use of the club notepaper, he had looked up the rules; though he found that he had not broken these, he replied that, rather than offend members, he would not use the notepaper in future. He added that nothing further happened until he received the letter in August recommending him to resign; he at once returned from a holiday, took legal advice and prepared a comprehensive answer to the charge, in order to present it to the committee when they should call on him. But he never was called on to answer the charge: he was merely informed that a meeting was to be held on October 12 to consider his case, and was not even given the time of the meeting. A week later he was expelled.

Simon rose to cross-examine. His task was a formidable one, for it was now only too clear that the plaintiff had never been given an opportunity by the committee to explain, but had been condemned unheard. Since Simon could not challenge the facts presented by Mr. Field, he could not hope to obtain judgment for his clients; the most that was open to him was to minimise the damages they would inevitably be called on to pay for breach of their contract with Captain Wright in respect of the club's amenities (which Mr. Field had picturesquely described as providing "a refuge from solitude and boredom") and, further, for injury to his reputation. In the second item lay the danger; the jury might award Captain Wright an enormous sum and, therefore, Simon set to work to attack him.

The first question was, "Is the Bath Club a club for both men and women?" When the plaintiff said it was, the Judge commented, "Then it does not comply with the bishop's

definition of a man's club as a place 'where the women cease from troubling, and the weary be at rest.'” Simon's next question was, “Is it your view that every man on two legs is a gentleman for the purpose of the Bath Club?” As Captain Wright said he could not understand this, Simon elaborated it by asking whether it was not injurious to the interests of the club to have a member who notoriously behaved like a cad. The plaintiff had naturally to agree that, if a man was a cad, he was a menace to any club. Whereupon, as Simon intended, the question arose as to who was to judge of a man's caddishness, and he submitted to Captain Wright the names of twenty-two distinguished men who had voted for his expulsion. Were they not competent judges? Simon asked.

The plaintiff, in support of his absurd charge against Gladstone, had quoted a saying that “Gladstone was governed by his seraglio.” Simon now forced him to admit that, in the original context, these words had referred to “the devoted wife and daughter who looked after the comforts of the great Liberal leader.” After this exposure, Simon asked him if he still considered himself fit to be a member of a gentlemen's club. Then Simon quoted from the letter which Captain Wright had written in answer to Lord Gladstone's protest; it suggested that Lord Gladstone's vocabulary had been acquired “rather by practice in your Lordship's pantry than by the exercise of your Lordship's talents for debate in the House of Lords.” Was this the language of a gentleman? The plaintiff replied that it was as gentlemanly as his correspondent's, and that he now wished he had used much stronger terms. The case for the defence was really contained in one of the last questions which Simon put: “Can you not conceive a case where a committee might take the view that no excuse could alter their opinion that a member ought to be expelled?” This was, of course, designed to meet the point put by both Mr. Field and the Judge—namely, that the plaintiff had been condemned unheard. “Can you not conceive that the committee might think your conduct so bad?” Simon persisted. “No,” the plaintiff answered, “because you don't deny the truth of my statement about Gladstone. If you had pleaded that I had made an untrue statement, I might have

thought it possible that they would take such a view. As it is, I can't."

At the close of the plaintiff's case, Simon rose to say that he would call no evidence. This meant that he would be allowed to have the last word to the jury. The Judge ruled that it was established that the plaintiff had not been heard by the committee and that the contract between him and the club had been broken; to this Simon had perforce to agree.

Mr. Field directed most of his final speech to denouncing Simon's cross-examination, which he described as the most offensive and unfair ever heard by him in the courts. He asked the jury to note carefully that the defendants had not given evidence, but had chosen instead to rely on the ablest advocate at the Bar to suggest that the plaintiff was a cad.

Simon followed. He began by suggesting that a farthing damages would give Captain Wright "just about a farthing more than he is worth." The plaintiff, he said, was claiming damages for the loss of his reputation, but he had failed to satisfy the test of a gentleman, for no gentleman would broadcast on inadequate grounds deeply injurious statements about a man recently dead. He summarised the difficult situation with which the Bath Club had had to deal, and ended by urging that it might be very hard for the committee of a social club always to act in perfectly precise accordance with its rules and that this committee had discharged their duty as they understood it.

The Judge's summing-up next day warned the jury that Simon's eloquent speech on the matter of damages had nothing to do with the question of the defendants' liability. The cause of the action, he said, rested on this: the plaintiff entered into a contract with the club that, after paying his fees and subscriptions, he should be entitled to use the club unless he was properly expelled. A man condemned unheard was not properly expelled: therefore, Captain Wright must be given the verdict. As to damages, these were divisible into two heads, and the jury should award the plaintiff two separate sums, one for the loss of the amenities of the club, and the other for injury to his reputation. Mr. Justice Horridge added, however, that, since the question had

never been decided whether damages under the second head were recoverable in cases of this sort, he would later require to hear legal argument on the point.

He went on to say that the plaintiff's conduct did not affect the question of damages on the first issue, unless the jury considered that his membership of the club would be useless to him because he would now be shunned by all the other members. On the other hand, Gladstone, as a great public character, was liable to criticism: would a club ordinarily expel a man who wrote disparagingly about a dead statesman, unless the son of that statesman were personally concerned? As regards loss of reputation, the Judge suggested that the jury might think expulsion from one West End club would be very serious for a man if he wished to be elected to another; but, if they thought the plaintiff's reputation was so shattered that no other club would elect him, he might not be entitled to much compensation.

In the end the jury awarded Captain Wright £100 damages for loss of the Bath Club's amenities and £25 for loss of reputation. In Simon's absence Sir William Jowett, K.C., who had appeared with him for the defence, said that he would not stay to argue the legal point involved for the sake of a mere twenty-five pounds. So it remains unsettled.

§

In this same month Simon had one of his few unpleasant incidents in the courts. He was appearing before Mr. Justice Astbury in a case brought by Messrs. Tate and Lyle, the sugar manufacturers, against two railway companies; against him was Mr. Wilfrid Greene, who has since become Master of the Rolls. Before the Judge gave his decision, both counsel applied to the Court of Appeal that the hearing of an appeal should be expedited. This shocked the Appeal Judges: Lord Hanworth, the then Master of the Rolls, said that the premature application was discourteous to Mr. Justice Astbury, and Lord Justice Scrutton agreed that it was "most disrespectful." Later on, however, Sir John Astbury explained that Simon and Mr. Greene had made their application with his knowledge and approval. So everything ended happily.

CHAPTER THIRTEEN

IN the spring of 1927 a wholly unexpected chapter in Simon's life opened when Lord Birkenhead, as Secretary of State for India, persuaded him to preside over the Royal Commission which, by the terms of the Government of India Act of 1919, was to report whether and to what extent it was desirable to "extend, modify, or restrict the degree of self-government" in India. As it happened, Simon had just returned from a few weeks' holiday there, during which he had visited his son, who (after winning scholarships at Winchester and Balliol) had joined the shipping firm of Mackinnon, Mackenzie and Co. in Calcutta,* and stayed with the then Viceroy, Lord Reading, his old colleague in pre-War Cabinets, in that city and in Delhi. It may be that news of this journey first planted in Lord Birkenhead's head the idea of inviting Simon to be chairman of the Commission, though, of course, there was no suggestion that the latter had sought, or had had time, to acquaint himself with the intricacies of the political situation in India.

The decisive factor in Lord Birkenhead's view was the need to find a man with the brains, the tact, and the industry needed to discharge a task of extraordinary complexity and delicacy; and who, moreover, was not already compromised by indiscreet utterances about the future of India. Most Secretaries of State would have played for safety by selecting some courtier peer who could afterwards be rewarded (or dismissed) with a Colonial governorship; but Lord Birkenhead was ambitious that the Commission should have the best possible chairman. Despite their political differences, there was nobody for whom he had more intellectual respect than for Simon, his old friend and adversary from undergraduate days at Oxford. There had been moments when their friendship had been shadowed, especially during the bitter political conflicts just before the War, but never the high opinion they

* Mr. Gilbert Simon was afterwards put in charge of the P. & O. office in Colombo, and has since become an assistant manager of this line.

held of each other's capacity. As Mr. Winston Churchill has said, "There was a time when F.E., whom I knew so well, spoke hardly of Simon. I have never heard Simon speak inimically of F.E., but he wore his marble smile when his name was mentioned. However, I am glad to relate that the antagonisms of the thirties and forties faded in the broader light of full maturity and full success."*

When one recalls that Simon, at the beginning of 1927, seemed doomed (despite his prominence in the debates on the Campbell case and the General Strike) to fade out of the political heavens in the eclipse of the Liberal Party, the audacity of Lord Birkenhead's choice becomes evident. It is no small testimony to both men concerned, and to Simon's reputation both in Parliament and with the public, that, when the unexpected appointment was eventually published, it was generally received as the most suitable which could possibly have been made.

To the best of my belief, the invitation was decisively conveyed and accepted during a round of golf on the Tadmarten course, which was conveniently placed to the country houses of Simon and Birkenhead. I was the third player in a match which, even without its Indian background, did not lack excitement. Lord Birkenhead's golf was unorthodox: his method was to stride up to his ball, slash hastily at it and as briskly follow it up on its erratic course. Simon, on the other hand, has always been a deliberate player: if not a very hard hitter, he is accurate and does not mind taking infinite pains before playing each shot. These different styles meant that, on the day in question, the two men rarely met between the tee and the green, and I found myself sometimes near one and sometimes near the other, alternately in danger from F.E.'s swipes or witnessing from far off his impatient protests at having to wait for Simon to play. After one more than usually maddening wait near a green, we saw Simon skilfully loft his ball out of an awkward bunker to within a few inches of the hole. Lord Birkenhead gave way for a moment to natural and blasphemous indignation, but then allowed broader considerations to widen his view. "Yes, he's the

* In the *Sunday Pictorial*, November 8, 1931.

right man for the Indian job!" he remarked to me, and hit his ball sharply across the green into the bunker which Simon had just vacated. I have always supposed that the earnest manner in which he then engaged Simon in conversation about India was intended as much to put the latter off his game as to clinch the invitation, but Simon did not allow any thought of the future to hasten or impair his shots.

His acceptance meant a great financial sacrifice. Moreover, among the briefs which were arriving was an immensely valuable one from the Indian Princes to represent them in negotiations with the Government. As his appointment had to be kept secret for some months, he had a certain difficulty in refusing this brief without giving his reasons—even his clerk, who was not in the secret, thought he had gone mad—but eventually it went to Sir Leslie Scott.

Lord Birkenhead summed up the situation when, in January, 1928, on the day when the Commission at last left London for its first tour of India, he wrote to Lord Irwin, the new Viceroy:

I cannot help thinking that Simon's published decision to abandon practice at the Bar will be regarded as a great proof of earnestness in the task he has undertaken, and of his own realisation of its difficulty and importance. He is, of course, a rich man, and I suspect that he was becoming weary of eternal forensic conflicts, and ever since a boy—as you know, we were at Wadham together—he has been very honourably, but very strikingly ambitious. Few people have realised it, but my own view has always been that he was more interested in politics than the Bar, though I have always thought that on great decisions he has generally taken the wrong line.* This does not, of course, in any way reflect upon his extraordinary suitability for this particular task, which, though it raises immense political problems, is also beset with a

* This refers to Simon's personal decisions—*e.g.*, his refusal of the Woolsack and his resignation from the Cabinet in the War over conscription. Lord Birkenhead could not then foresee that circumstances would justify the gamble of the first decision and wipe out the memory of the second.

number of others with which his clear, penetrating mind is eminently qualified to deal.

It may be added that, on the Commission's return three months later, Lord Birkenhead wrote to the same correspondent that Simon

played the best game of golf with me on Sunday that I have ever seen him play, and in fact himself said that it was the best game he had ever played in his life. He is as conscientious and laborious in his golf as in everything else, and if he loses a ball, unless you are prepared (which one is not) to insist upon the strict rule, you may sit down, after such perfunctory pretence as one offers of searching for one's opponent's ball, and count upon a steady half-hour for reflection.

The next task was to choose other members of the Commission. Simon was to represent Liberalism on it; Conservative members were soon found in the persons of Lord Burnham, Lord Strathcona, the Hon. Edward Cadogan, and Colonel Lane-Fox (now Lord Bingley); but there were hitches over the two Labour Party representatives. Some of the possible candidates were disqualified by reason of the extreme views they had expressed on Indian affairs: some were barred by the distrust or jealousy of colleagues. With well-simulated sympathy Lord Birkenhead finally suggested to the Labour leaders that they might care to nominate Mr. Oswald Mosley, who was then a new and all too conspicuous figure in their ranks; this suggestion so outraged the others that they quickly decided to put forward Stephen Walsh, the miner M.P. who had become Secretary for War in the Socialist Government of 1924, and Mr. Clement Attlee, who had been his Under-Secretary. Mr. Walsh had almost at once to resign through ill-health, and his place was filled by Vernon Hartshorn, President of the South Wales Miners' Federation and a former Postmaster-General.

In January, 1928, as has been said, the Commission went out to India on preliminary voyages of examination. They were met at Bombay by Congress demonstrators, who held up large black flags with "Go back, Simon!" in white letters

on them, and loudly declared their intention to boycott the Commission's work; as, however, Simon and his colleagues were unperturbed by this and checkmated the boycotters by demonstratively consulting more amenable Indian groups, the opposition soon diminished and, in the three months of their stay, the Commission was able to collect a vast mass of oral and written information, the gist of which may be found in the four hundred pages of the first volume of their report.

In September of the same year they went out to India again, and stayed for six months. On the last stage of this journey Simon was the guest of honour of the Legislative Assembly in Delhi when a bomb was thrown into it by a terrorist. He escaped without hurt, and remained unmoved even when his return to London was made the occasion of an Indian and Communist riot at Victoria Station. He and his colleagues, with Sir Walter Layton, who had been co-opted to assist them on the economic side of their proposals, then sat down to prepare their report and their recommendations. As the members were unanimous in their views, this work went smoothly enough; the actual writing devolved chiefly on Simon and Mr. Attlee.

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Almost at once they were faced with a General Election: Mr. Baldwin dissolved Parliament in May, 1929, and went to the country with the slogan of "Safety First" and the admission that he expected to lose seventy seats. (In the end he lost about twice as many, and the Socialists were returned to Parliament as—for the first time—the largest individual Party in the House, with 290 seats against the Unionists' 260 and the Liberals' 60.)

Simon's supporters in the Spen Valley looked forward with alarm to the contest. It had never been a safe seat; he had won it by over four thousand votes in the "Red Letter" election of four years before in a straight fight against a Socialist opponent, but it was certain that the Socialists would now recapture many of these votes, while the new "flapper vote" was sure to swell the Socialist ranks. Moreover, a vigorous Unionist candidate had for the past eighteen months been nursing the constituency in the person of Mr. Maxwell

Fyfe, a young barrister who both in Lancashire and in London was already regarded as a budding Lord Birkenhead. With him splitting the anti-Socialist vote, it was inevitable that Simon would be beaten. But on the eve of the election Mr. Fyfe announced that he would not stand, explaining that he did not wish Simon's work on the Indian Commission to be hampered by any difficulties in his constituency. It was denied that any secret agreement had been made with the local Liberals, but indubitably Lord Birkenhead had stoutly protested against Tory intervention in the Spen Valley fight. Mr. Fyfe's self-sacrifice—if, indeed, it was a sacrifice to abandon a campaign which, whatever its effect on Simon's chances, was in itself hopeless—did not damage his future, for he now occupies the safe seat of West Derby in Liverpool and is favoured for high political office.

Though the Tories abstained, a Communist candidate came forward, an Indian Trades Union official, Shaukat Usmani by name, who had never been near the constituency in his life and was prevented now from enjoying the privilege by the fact that he was in Meerut jail awaiting trial on a political charge. A Mr. Brain acted as his agent and spokesman and discharged these duties with much good humour, assisted by Shapurji Saklatvala, the Parsee Communist who had shocked and enlivened the previous Parliament as M.P. for North Battersea.

Mr. Tom Myers having abandoned the Socialist candidacy, his place was taken by Mr. Herbert Elvin, secretary of the National Union of Clerks, on whose behalf it was urged that, among his other qualifications, he was a total abstainer and had once spent eight years in India. Altogether there was a great deal of talk about India at this election in the Spen Valley, none of it much to the point. Simon stood as a Liberal Free Trader and a supporter of Mr. Lloyd George's schemes for reducing unemployment by a policy of large-scale public works.

When the result was declared it was found that Simon had been victorious in a close fight. He polled 22,039 votes to Mr. Elvin's 20,300, which gave him a majority of 2,739, about seventeen hundred fewer than in 1924. Mr. Shaukat

Usmani had rallied exactly 242 votes to the standard of Communism and Indian independence. His agent, Mr. Brain, made by far the brightest speech after the poll on the steps of the Town Hall; he apologised for the absence of his candidate, who was, he said, "fulfilling a previous engagement elsewhere," and, with a cheerful nod at the figures, stated that "we have decided not to demand a recount." The speech of Mr. Elvin, who had nourished more hopes of success, was not nearly so affable, but Simon had long since ceased to expect much kindness from his Labour opponents.

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He returned to London to continue the work of preparing the Commission's reports. A few weeks later, however, the whole position was complicated by the sudden pronouncement of Lord Irwin, the Viceroy, that "the natural issue of India's constitutional progress is the attainment of Dominion status." It is still something of a mystery why the new Prime Minister, Mr. Ramsay MacDonald, and the Viceroy disregarded the Commission's desire that no premature announcement of policy—especially one couched in such vague and extravagant terms—should be made.* Several members of the Commission were tempted for a moment to throw up their unfinished task, which had been so grievously prejudiced. But Simon persuaded them that it was better to go on than to waste two years' work.

There was a debate in the House on the Viceroy's statement, in which Simon took part. "My colleagues and I," he began, "have very anxiously considered whether even in the present circumstances it would not still be better that no one should say any word with the authority of the Statutory Commission," but they had come to the conclusion that Simon should speak for a few minutes in the debate to make their position clear. It was true that their advice had not been asked in the matter of the actual words used by Lord Irwin; moreover, when the Commission was informed that the Government proposed to make a statement through the

* I have discussed Mr. Baldwin's share in this odd incident in my *Stanley Baldwin, Man or Miracle?* pp. 175-82. Mr. Arthur Bryant prudently ignores it in his recent biographical eulogy of that politician.

Viceroy, the members of the Commission had refused all responsibility in the matter. Their duty, as they saw it, was still to carry out the duty laid on them by Parliament two years previously and not to be diverted from this purpose by any declaration or statement made by anybody whatever.

I would most earnestly ask Parliament to leave us to continue our work undisturbed, without Parliamentary controversy, for after all we have a very heavy piece of work to do. . . . It is useless to pretend that the incidents leading up to this debate have not for the time being added to our own difficulties through no fault of our own, but in fact these things do not make the slightest difference in the determination of the Commission and of every member of the Commission to finish its task, and nothing that has happened will affect or deflect the completion of our duty or the character of our report in the slightest degree.

Despite these reassuring words, however, it was only too clear that the labours of the Commission had been short-circuited by the Viceroy's statement. The Report was duly published in the following May in two large volumes, and, though its survey lost none of its value, nor its recommendations their force, the sequel showed that Simon and his colleagues might almost as well have saved themselves all their trouble. The Indian Bill which the Baldwin Government afterwards introduced paid only a perfunctory compliment to the Commission's work.

There was some excellent writing in the Report, the last paragraphs of which may be quoted as being unmistakably from Simon's pen:

In writing this Report we have made no allusion to the events of the last few months in India. In fact, the whole of our principal recommendations were arrived at and unanimously agreed upon before these events occurred. We have not altered a line of our Report on that account, for it is necessary to look beyond particular incidents and to take a longer view.

Our object throughout has been to bring to the notice

of the British Parliament and the British people such information as we are able to supply about the general conditions of the problem 'which now awaits solution, together with our considered proposals. We hope, at the same time, that our Indian fellow-subjects, after doing us the courtesy of studying the Report as a whole (for isolated sentences may give to any reader a wrong impression), will find that what we have put forward has been written in a spirit of genuine sympathy.

No one of either race ought to be so foolish as to deny the greatness of the contribution which Britain has made to Indian progress. It is not racial prejudice, nor imperialistic ambition, nor commercial interest, which makes us say so plainly. It is a tremendous achievement to have brought to the Indian sub-continent and to have applied in practice the conceptions of impartial justice, of the rule of law, of respect for equal civic rights without reference to class or creed, and of a disinterested and incorruptible Civil Service. These are essential elements in any State which is advancing towards well-ordered self-government. In his heart even the bitterest critic of British administration in India knows that India has owed these things mainly to Britain. But, when all this is said, it still leaves out of account the condition essential to the peaceful advance of India, and Indian statesmanship has now a great part to play. Success can only be achieved by sustained goodwill and co-operation both between the great religious communities of India which have so constantly been in conflict and between India and Britain. For the future of India depends on the collaboration of East and West, and each has much to learn from the other.

We have grown to understand something of the ideals which are inspiring the Indian national movement, and no man who has taken part in working the representative institutions of Britain can fail to sympathise with the desire of others to secure for their own land a similar development. But a constitution is something more than a generalisation; it has to present a constructive scheme.

We submit our Report in the hope that it may furnish materials and suggest a plan by means of which Indian constitutional reconstruction may be peacefully and surely promoted.*

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Scarcely had the Report been published, a comely but stillborn babe, than Simon announced his return to the Bar, thus throwing a momentary gloom over the clerks of several of his rivals, who had been doing very nicely in his absence. The Benchers of the Inner Temple showed their regard for him by electing him their Treasurer for the coming year, while the demand for his services in the courts was greater than ever before.

Before he took up his practice again, however, he was asked by the Government to conduct a public enquiry into the tragic loss of the airship R 101. As he stated at the beginning of his Report to the Secretary of Air, Lord Amulree:

I was appointed, under the Order of October 22, 1930, made by you under the Air Navigation (Investigation of Accidents) Regulations, to hold an investigation into the causes and circumstances of the accident which occurred on October 15, 1930, near Beauvais in France, to the airship R 101, and to make a Report on the matter. . . . The enquiry, over which I presided, was held in public at the Institution of Civil Engineers. It was opened on October 28, 1930, and lasted in all for thirteen days. The Attorney-General (Sir William Jowett, K.C.), the Solicitor-General (Sir Stafford Cripps, K.C.), and Mr. Wilfred Lewis appeared at the enquiry on behalf of the Crown, and Mr. P. L. Teed appeared on behalf of the widow of Flight-Lieutenant Irwin, captain of the R 101.

It is a matter of great satisfaction to me, as it will also be to yourself and to the public, that my two Assessors, Lieut.-Colonel Moore-Brabazon and Professor Inglis, find themselves in agreement with me on all points in the Report which I am presenting. I may be permitted to

* *Report of the Indian Statutory Commission* (H.M. Stationery Office, 1930), vol. ii., pp. 315-6.

express my deep sense of obligation to them both for assistance and guidance, without which the Report could not have been written. The document may therefore be taken as our joint work and opinion.

Simon's terms of reference were short—to investigate the accident and its causes—but he interpreted them liberally, and his Report was long, detailed, and often highly technical. It went into the history of British airships and previous accidents to them; it considered model experiments made by the National Physical Laboratory; it dealt minutely with the design and construction of the R 101, and even included drawings and plans.

The facts of the accident, Simon said, were few enough. The R 101, the largest airship in the world, with a length of 777 feet and a gross lift of about 167 tons, set out from Cardington on her maiden voyage to India at about 6.30 in the evening of October 4, 1930, with fifty-four people on board, including the Secretary for Air, Lord Thomson, the Director of Civil Aviation, Sir Sefton Brancker, and the designer, Colonel Richmond. At about two o'clock that night she struck the earth in the open country south of Beauvais, barely two hundred miles from her starting-place. Fire immediately reduced her to a wreck, and only six men escaped, who gave evidence in the course of the enquiry. His Report stated that more than two years had been spent on "the elaborate investigations and calculations on which the design of R 101 was based, and in 1927 actual erection began in the huge shed at Cardington prepared for the purpose." He then described her trial flights, one of which took place in a severe gale. After the seventh of these she was found to have "too small a useful lift to make it possible for her to undertake the voyage to India." Changes were proposed, and Lord Thomson "determined to adopt the course of prudence even at the expense of further delay." The original design protected the gas-bags from chafing against the girders, but, when additional gas-bags were now inserted to increase the lift, this protection was lost; instead, padding was inserted, which was expected adequately to prevent chafing. There

was now some urgency about starting for India as soon as possible, because Lord Thomson wanted to be back in England to attend to the air business of the Imperial Conference. Preparations were quickly made, and permission was sought and obtained from the Air Ministry to reduce the final trial flight to fewer than twenty-four hours, if it were found that the airship went well. Unfortunately, no report of this last trial was available for the enquiry.

Just as in the Indian Report Simon used his descriptive gifts to liken the North-West Frontier to a gigantic hand, so now he emphasised the immense size of the gas-bags by a simple comparison:

The largest of them, when fully inflated, measured from the crown to the bottom 126 feet—*i.e.*, it would extend from the floor of Westminster Hall well above the roof. The whole row of them could not be accommodated within the extreme length of Westminster Abbey.

Discussing now the cause of the accident, he started from a series of facts established by eye-witnesses and scientists. He and his colleagues considered the structure of the R 101 and concluded that the accident was not caused by weakness in that respect; nor was there any failure of the controls. There was no reason to suggest any lack of competence in officers and crew; but as the watch was changed just before the disaster it might have been impossible, in the weather conditions prevailing, to bring the airship back to a horizontal position. After reviewing all the evidence Simon rejected every explanation of the accident except that of loss of gas. They found that the ship had lost gas at an abnormal rate even during the trials; this was mainly brought about by the wearing of holes in the gasbags when she rolled, and there might also have been leakages through the valves. They concluded, however, that probably some specific accident had occurred before the crash, such as the ripping of the fore part of the envelope. No amount of care, they said, could ensure that this would not happen, though they sounded a more hopeful note when describing a journey to Canada of the sister-ship, the R 100, despite a gas-leak.

Endeavouring to reconstruct the accident, Simon assumed that the R 101 had become heavy through loss of gas in the fore parts; she was being buffeted by the wind, and her nose was therefore sometimes above and sometimes below the horizontal. The coxswain who took over at two o'clock, not having the "feel" of the airship, might have put his elevation down rather too far. The nose would then drop; a strong buffet of wind might have sent it further down, and, when the coxswain tried to correct this by putting the elevator up, the R 101 would take a long time to recover, owing to her heaviness through loss of gas, and might lose about 800 feet of height. Her nose would thus be no more than horizontal, whereas it should have been pointing up, and, when the next dive came, she hit the ground.

His report ended:

Airship travel is still in its experimental stage. It is for others to determine whether the experiment shall be further pursued. Our task has been limited to ascertaining, so far as it is possible, the course and cause of a specific event.

That event brought to a close, in a few moments of tragedy, an enterprise upon which years of concentrated effort had been directed by the pioneers who perished. The circumstances of their death can only add to the admiration evoked by their skill, courage, and devotion.

There was general surprise that it should be possible to be so positive about the cause of the disaster, but experts agreed that the conclusions of Simon and his colleagues proceeded irresistibly from the evidence they had collected. As we know, one result of the enquiry was that the hint in the first of the final paragraphs I have just quoted was taken, and no further experiments in airships have since been undertaken in this country.

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Shortly afterwards Simon appeared in a very remarkable case in which the Banco de Portugal, the bankers to the Portuguese Government, sued Messrs. Waterlow, the City of

London printers, for a sum amounting at first to more than a million pounds.

The Banco, as I may call it, has held since 1887 the exclusive right to issue banknotes in Portugal, and at the date of this case (1931) the currency of the country was entirely composed of such notes. The total amount which the Banco might issue was restricted by law, but, subject to this limit, it could at any time issue more or less currency according to its policy. Moreover, the notes were inconvertible; that is, to say, the Banco was under no obligation to hand over gold for them. Waterlows, a famous firm largely engaged in printing banknotes and similar documents, contracted in November, 1922, to supply the Banco with an issue of 500-escudo notes—500 escudos corresponded to about £5. These notes, which bore a portrait of Vasco da Gama, the great Portuguese navigator, were sent out to Portugal in 1923 and 1924, and most of them were put into circulation by the Banco.

In 1925 an enterprising Dutchman named Marang van Isselvere, whom Simon described in the course of the proceedings as "an ingratiating foreigner with beautiful manners," formed in Oporto a private bank, the Bank of Angola, which soon did considerable business throughout Portugal. On December 4 of that year, however, the manager of another private bank visited one of the Banco's directors in Lisbon and cast doubts on Marang's integrity; these suspicions were passed on to the police, who next day searched the Bank of Angola's premises in Oporto and found bundles of Vasco da Gama banknotes which (from duplication of the numbers on them) they correctly surmised to be forgeries. But how many such notes had been forged, and when and where, nobody was prepared to say. After a lengthy discussion the Banco directors decided—this was December 5, and all the dates are significant—that the only thing to do was to withdraw the Vasco da Gama issue from circulation; they undertook to exchange at their branches any notes of this issue by notes of similar face value up to December 26, after which the Vasco da Gama notes would be worthless. There immediately began a terrific run on all the branches of the Banco

and many thousands of the notes began to come in. On December 7 it occurred to the Banco to telegraph to Waterlows, their printers, and they did so in these words: "*Great falsification notes of 500 escudos. Send expert Lisbon urgently to examine. Make investigation on your side.*" Upon this Waterlows cabled back for specimens—which were never sent—and the head of the firm, Sir William Waterlow, hurried out to Lisbon with two other directors, arriving there on December 13.

He was shown some of the dubious notes and explained that, in a sense, they were not forgeries at all; they were part of an additional printing of 580,000 Vasco da Gama banknotes carried out by his firm for the Bank of Angola earlier in the year on the instructions of the Banco's special representative, Marang van Isselvere, to whom they had been delivered. When the Banco directors denied that they had ever employed Marang on such a mission, the fat was in the fire. Sir William realised that he had been duped by Marang, while the Banco officials became suddenly suspicious and refused to discuss anything with him except in the presence of a Portuguese Judge, who kept bursting into tears during the conversation. Nevertheless, Sir William succeeded by December 16, after he had been in the country for a full two days, in showing the Banco directors how they might distinguish the Marang notes from the original issue; most of the Marang notes (490,000 out of 580,000) carried a private mark of the printers, a small letter on the stalk of a lily in the design, which did not appear on the plate previously used. Despite this information, however, the Banco continued to exchange all Vasco da Gama notes, whether of the original or the Marang issue; by December 26, the last day appointed for handing in the notes, it found itself in possession of about 209,000 forgeries, for each of which it had handed out 500 escudos in a different form of paper currency.

Marang and some of his associates were later arrested and tried in Holland, his native country. He was sentenced to eleven months' imprisonment, served this term, and prudently emigrated before the Dutch Court of Appeal increased his sentence to three years.

His fate did not much interest the Banco directors, who had now made up their minds to sue Waterlows in the English courts for breach of contract and for negligence, claiming £1,115,613 damages, this being the sum which they said they had lost through exchanging the Marang notes. When, however, they received about half a million pounds from the liquidation of his bank, they correspondingly reduced their claim to £610,392. It must be added that, during the protracted litigation, no suggestion of any sort of dishonesty on the part of Waterlows was made by anybody at any time. The Banco's case was that, when it made the contract with the firm in 1922, there was agreement that Waterlows should take all proper precautions to prevent forgery of the notes and that they should not reprint from the plates except in accordance with the Banco's instructions; in its view Waterlows were guilty of a breach of duty because they had fulfilled Marang's order without the knowledge or authorisation of the Banco. Waterlows denied that they had committed any breach of contract or negligence, and went on to say that if the Banco had suffered any damage, this was through its own act; because, when it called in the Vasco da Gama issue, it need not have exchanged the forged notes, the vast majority of which could have been recognised by the special printers' mark.

The case came on in the first instance before Mr. Justice Wright (who, unlike his colleague in Portugal, remained dry-eyed throughout the entire affair) and lasted for twenty-one days. At last Waterlows were able to explain how it was that they had duplicated the issue of notes. Marang, it seemed, approached them in London in 1925, ostensibly on behalf of the Banco. He told them that the Bank of Angola was in difficulties and that a large loan was about to be made to it by a syndicate, in return for which the syndicate was to be allowed by the Banco and by the Angola Government—Angola is, of course, a Portuguese colony in West Africa—to issue Vasco da Gama notes in that colony; the transaction, however, must be kept utterly secret because a minority of the Banco directors had not yet agreed with the majority about it and, moreover, a third Portuguese bank

had a prior right to issue notes for the Portuguese colonies. Waterlows had, therefore, observed the utmost possible secrecy in the matter, had always communicated direct with Marang, and had been careful not to breathe a word of the affair even to the Portuguese Embassy in London or to other people who would have been able at once to show them that Marang was a fraud. Even so (the Banco pointed out) Waterlows might have noticed for themselves that the note-paper which Marang used was not the Banco's usual paper; the signatures to the letters were not those of the usual signatories; the seals were not the usual seals, and, what was more, the letters were written in English instead of Portuguese, which the Banco had always previously used in communicating with the firm.

During this first trial Waterlows made strenuous efforts to find a Portuguese lawyer to give technical evidence on their behalf, but, regrettably, the Portuguese Bar took the line that it would be unpatriotic to assist the firm in any way at all—an attitude which caused the Judge to recall that, during the War (in which, it will perhaps be remembered, the Portuguese took part), he had appeared in court on behalf of enemy aliens. In the end he gave judgment for the Banco, holding that the terms of the contract implied that Waterlows should not use the plates or print similar notes without the authority of the Banco, and that they had not taken reasonable care to prevent the fraud. He awarded the plaintiffs £569,421, instead of the full sum they claimed, holding that, since Sir William Waterlow had told them on December 16 how to distinguish the bad notes from the good ones, the printers were not liable in respect of forgeries exchanged after that date.

Both sides appealed: Waterlows on the ground that the damages were excessive, and the Banco on the ground that they were not enough. Simon was now briefed by Waterlows and he opened their appeal, in a speech which lasted for no fewer than twelve and a half hours, before Lord Justices Scrutton, Greer, and Slesser on February 23, 1931. His argument opened up several new lines of country.

He began by saying, "I am not going to yield to the

temptation to become the Edgar Wallace of the Law Courts, though I realise it would be a popular part." In the "very remarkable" circumstances, he added, his clients would not deny a certain liability. But, he went on, the Banco had really suffered only a trifling loss—the mere cost of the paper and printing of the notes which it had exchanged for the *Vasco da Gama* issue! This cost he estimated as about £8,900. One must not look at the matter, he urged, from the English point of view, because in England the holder of a banknote could theoretically demand gold in exchange for it, whereas in Portugal a banknote could be exchanged only for another banknote: in that country the currency was inconvertible (and, the trial Judge had said, was clearly going to remain so), so that the only obligation on the Banco, when one of its notes was presented to it, was to produce a fresh note from the printing-press. Moreover, there was a further difference between English and Portuguese banking conditions in that, while in England an increased issue of paper requires an increase of gold in the bank's possession, in Portugal the Banco had no such liability.

Therefore, Simon said, the Banco's loss should not be assessed by treating the notes which had been given out in exchange for the withdrawn issue as though the Banco had lost the face value of these notes. It had not even diminished its power to make fresh issues of currency in the future, because after the trouble the Portuguese Government had thoughtfully raised the limit up to which the Banco might issue notes. He admitted that the extra notes issued (to replace the Marang forgeries) had produced a certain amount of inflation in Portugal, but the loss thereby caused fell on the members of the public who held the currency and not on the Banco, which issued it. Would the Banco benefit, he asked, if the number of notes in circulation were diminished? No, he answered; consequently, it could not claim to have suffered loss because the number had been increased.

He repeated his admission that his clients were liable for the cost of printing a new issue of notes, but, as for the huge claim by the Banco, he submitted the legal argument that in no circumstances could Waterlows be held liable for

it, because the alleged loss did not arise naturally from any breach of the original contract, nor was it a loss which the parties could have had in mind when they made that contract. Further, whatever the merits of its case, the Banco was under a duty towards Waterlows to mitigate as far as possible any damage arising from a breach of contract—it is good law that anybody entitled to damages must as far as possible minimise these damages—but, instead of refusing to exchange the forged notes on and after December 16, when Sir William Waterlow had explained how these might be detected, the Banco had persisted to the end in accepting the forged notes as well as good ones of the same issue. If the Banco wanted to be generous, Simon argued, it must pay for the privilege, and not expect Waterlows to do so! What was more, the Banco should have asked Waterlows at once if there was any means of detecting the forgeries, and in this way it would have been able to stop exchanging them almost immediately after the raid on Marang's bank.

Against this, the Banco's counsel said that, to take the last points first, it had not considered the possibility that Waterlows had printed the false notes; therefore, it did not at once think to ask the firm for assistance. Besides, the forged notes were so nearly indistinguishable from the genuine ones that banking officials in Portugal would have found the utmost difficulty in trying to apply the test. And what would have happened in that country if the Banco had announced that it was ready to exchange the real Vasco da Gama notes, but would not exchange others which, from the public's point of view, were identical with them? There would have been economic paralysis and a general panic. As for the rule that anybody liable to damages must try to minimise these damages, it is equally good law that a person entitled to damages is not expected to injure his credit or reputation in order to minimise them. To have refused to exchange *all* the notes would have shaken confidence in the Banco.

In regard to Simon's main argument—namely, that the Banco's only real loss was the cost of printing an alternative issue of notes—the reply was made that the true test of loss was not the convertible value of the issue, nor its value as

mere printed paper, but its *marketable* value. The notes, once issued, were the money with which the Portuguese people "lived, died, worked, and played"; the Banco only parted with its notes in normal circumstances against value received, which value could be ascertained by looking at the rate of exchange of the escudo with the money of any gold-currency country. The Banco expected to receive securities or debts or foreign currency for every note it issued, but it had not received anything whatever for the notes it had been obliged to pay out in exchange for the forgeries.

The Judges considered these arguments and counter-arguments, and showed themselves much impressed by Simon's case. Two of them, the majority, held that the damages should be reduced to £300,000, because the Banco could and should have distinguished between the good and bad Vasco da Gama notes by December 10 instead of December 16 (the date which the trial Judge had held to be the reasonable date) and should not have exchanged any more of the forgeries afterwards. Lord Justice Scrutton, however, considered that the Banco was justified in exchanging all the notes up to December 26 (the last date appointed for the conversion), but, despite this concession to the Banco's case, he held that Simon was right in putting the Banco's loss at the cost of printing new notes—£8,922.

Needless to say, both sides were still unhappy. The Banco saw no good reason why its claim should be whittled down by half—still less, that this should be reduced to a mere trifle like £8,922—while Waterlows considered that Lord Justice Scrutton's estimate was the right one, though the rest of his judgment was, in their view, obviously mistaken. So they both appealed to the House of Lords. Simon, who was otherwise engaged,* did not appear at this final stage, though the arguments which he had presented to the Court of Appeal remained the basis of Waterlows' case. By a majority, however, the Law Lords decided that judgment must be entered against the firm for the whole sum which the Banco had originally claimed—namely, £610,392.

* He had by this time become Foreign Secretary, as will be described in Chapter Fifteen.

CHAPTER FOURTEEN

A FEW weeks after the beginning of the Waterlow bank-note affair, in March, 1931, he was briefed in another remarkable case, this time in the Probate Division. It concerned a will of over £300,000, and because of this huge sum, because the persons chiefly interested were a High Sheriff of Devonshire and an Earl's daughter, and because there was some extraordinary evidence, the case was very widely reported.

Mr. Augustus Langham Christie, of Eaton Square, London, and Tapeley Park, Devonshire, had died on April 7, 1930, at the age of seventy-three. He left a widow, who had been the Lady Rosamond Alicia Wallop, daughter of the fifth Earl of Portsmouth; and a son. His widow propounded (that is, put forward) a will made by him in 1901, under which she was the sole heiress and executrix. She admitted that her husband had purported to make a further will in January, 1925, but she alleged that this had not been properly executed, that he had not understood or approved the contents, and that since 1921 he had not been of sound mind, memory, or understanding. She went on to allege that he had not given any instructions for the 1925 will and that he was in such a state of mental disorder as not to appreciate the nature of the act of making a will or the extent of his property or the claims to which he ought to give effect.

This second will was propounded by Mr. Oerton, a Barnstaple solicitor who was the executor named by it, and it was supported by a cousin of Mr. Christie, Mr. Otto Nicholson, M.P., who was the residuary legatee for life under its terms. Each party in the action asked the court to pronounce in favour of the will of which they were respectively executors. The case was heard by Lord Merrivale, and lasted over a fortnight.

Simon, with Mr. Stuart Bevan, K.C., and Mr. Noel Middleton, appeared for Lady Rosamond. Sir Patrick Hastings and Mr. Cotes-Preedy, K.C., were for Mr. Oerton; while Mr. Nicholson was represented by Mr. T. Bucknill.

Sir Patrick Hastings opened the case, because the will he was advocating, the one of 1925, was later in date and would

prevail over the earlier one if the court pronounced for its validity. Persons propounding a will have to prove to the satisfaction of the court that it has been duly executed by a person capable of making a will. Simon's task was over, therefore, if he could establish sufficient doubt as to the testator's capacity in 1925, because the burden of proof was upon those who tried to set up that will. The President stated that the case had to be treated on the broad question of insanity, but throwing doubts on the sanity of such a man as Mr. Christie was not an easy matter.

Sir Patrick's argument was formidable. He began by saying that Mr. Christie had lived in Devonshire for years and was beloved by all his servants, tenants, and neighbours, many of whom, with doctors and solicitors, would come into court and swear that he was sane to the day of his death. Admitting that Mr. Christie was, in 1924, for two days a certified lunatic, he went on to explain how a difference of opinion had arisen about the old gentleman's mental condition. In 1920 he had a bad stroke, as a result of which he was paralysed and could scarcely write, saw with difficulty, and suffered from lapses of memory: his speech became hard to understand, and, from all these causes, he became easy to aggravate. This "easy to aggravate" opening was a clever device of Sir Patrick's, because it offered an explanation of certain behaviour to which he knew that Simon would refer.

Until 1914 Mr. Christie must have been remarkably strong and vigorous: Sandow had once offered to train him as a strong man. But in that year he caught pneumonia, and, on medical advice, stopped drinking. In 1918 he had a first stroke; in June, 1924, he had the later attack which resulted in his being taken to a medical home and certified as of unsound mind. The very next day, however, he was removed by Lady Rosamond, his wife, who in the following August was appointed receiver of the estate on the grounds that her husband was incapable of managing his affairs. This appointment did not of itself prove his insanity or show that he was incapable of making a will; and efforts had been made to set aside the receivership, which had aroused much local indignation.

Early in the case Sir Patrick Hastings called as a witness a Mr. Pitts Tucker, a solicitor who had known Mr. Christie since 1896. He not only gave evidence to the effect that Mr. Christie was sane up to his death, but also asserted that he had taken Mr. Christie's instructions for a new will in June, 1922. Part of this record read: "Give legacy to £1,000 Lady Rosamond Christie, £5,000 John Christie. Have given estate to Nicholson because son no children and he . . . is otherwise well provided for and prefers Sussex to Devon." Mr. Pitts Tucker also reported Mr. Christie as saying, "John—not married—never will be," a remark which time has shown to be wrong. Later on, the references to the son were alleged to be "No wife—no family—no nothing. Plenty." But this will was never properly completed.

When Simon came to cross-examine this witness he asked, "Why did you not carry out your instructions? If you had been dealing with a man of whose sanity you had no doubt, why should you not carry them out at once?" The answer was there was no reason for the delay, "except that I knew there would be a tremendous fuss." One may note that this is a little hard to understand, because a will is not made public when it is drawn up and signed. Simon's next point was, "Why did you decline to be trustee and executor of the proposed will?" The witness's answer was that he thought he would be accused of acting for his own advantage.

The next feature of this cross-examination was a challenge to the solicitor's view that his client was normal. "If," said Simon, "you had a client who would come downstairs in the daytime and walk about in his nightshirt, would you call him well-balanced?"

"No," said the solicitor.

"If your client had a habit of festooning the end of his bed with wearing apparel tied into fantastic knots for no reason at all, would you regard that as proof of testamentary capacity?"

"No."

"If your client, when he came down to breakfast, overthrew the furniture and tore down the curtains for no reason at all, would that be proof of testamentary capacity?"

"Not if he did it for no reason at all, although I can conceive of a man doing it if he were very annoyed."

"Suppose he did it first thing in the morning?"

"I have known people very annoyed first thing in the morning."

"Some people are," Simon agreed, and went on, "Suppose your client made a practice of putting dishes on the dining-room floor and throwing the food into the kitchen, would you call that proof of testamentary capacity?"

"He might still be able to make a will," the witness replied.

"Suppose a client had the dreadful practice of spitting in the faces of innocent people with whom he had no quarrel. What would you think of that?"

"I should think a great deal, but I should not know whether it was so bad as to affect testamentary capacity." But Mr. Pitts Tucker agreed that, if Mr. Christie ever did that, he had greatly changed since he had known him.

The will of 1925, prepared by a solicitor who knew Mr. Christie well, was on the same lines as the instructions given a few years earlier to Mr. Pitts Tucker. It was witnessed by four doctors, two of whom had been chosen because they knew Mr. Christie and two because they did not know him; this was done because he was still under the control of the Master in Lunacy. Sir Patrick Hastings explained the reasons behind the provisions of this will. Lady Rosamond seemed to think that the will was partly an expression of an insane dislike of her which her husband's illness had caused: Sir Patrick asserted, a little unkindly, that her husband's affection for her had always been slight. As to his son, he had been given an estate in Sussex by Mr. Christie and this made him a very rich man.

Mr. Oerton, the solicitor who took the instructions for the 1925 will, gave evidence in its favour. His firm had acted for Mr. Christie for forty years, although Mr. Oerton himself only came into contact with him in 1922 over a proposal for the sale of Lundy Island, which belonged to his client. Patience was certainly needed to understand Mr. Christie's conversation, the witness agreed, but he believed that he had understood it. He described how from that time on he had

frequently met Mr. Christie and nothing had made him think the latter to be of unsound mind. True, he was painfully afflicted; he was often at a complete loss for a word and could write very little; but he could sign his name and, when discussing the sale of Lundy Island, he had written down its original price, £18,000. In August, 1923, he told the witness that he wished to make a new will, giving the estate to the Nicholson family. When Mr. Oerton asked where the beneficiary lived, Mr. Christie could not find the word, but pointed towards London, and said, "Very big house." Mr. Oerton naturally questioned him further and received the answer, "You know; talk, talk." At this stage, Mr. Oerton, with what appears to be a flash of genius, asked, "Do you mean the House of Commons?" Mr. Christie had replied unappreciatively, "Yes, of course."

All the same, added Mr. Oerton, describing how his client used to indicate persons whose names he could not remember, "He would never let you rest until you had got it right": he would offer little descriptive hints, such as, "You know—beard," until the solicitor made the correct guess. The witness described how he had brought the four doctors to act as witnesses to the will and told them to satisfy themselves that Mr. Christie not only understood it but also approved of it; "I asked them to put to him any test they liked, and I said that, until all four of them were absolutely satisfied, I should refuse to let him sign."

Simon's cross-examination elicited the fact that the witness's retainer as Mr. Christie's solicitor had been terminated in October, 1926, by the Master in Lunacy. He went on to ask why Mr. Oerton had not taken steps to set aside Lady Rosamond's receivership of the estate, to which Mr. Oerton answered that he had made several complaints and had been obliged to act without payment. Another point which Simon made was that the witness had been left for some time under the impression that Mr. Nicholson was a nephew of the testator, whereas really he was only a cousin.

"You don't think that Mr. Christie could have drawn the distinction between cousin and nephew?" Simon asked, but Mr. Oerton replied that the reference throughout had been

to Colonel Nicholson's eldest son and that this had been sufficient for his purposes. He had, therefore, not even presented the alternatives of "cousin" or "nephew" to the testator.

A note made by Mr. Oerton was read to the court, which ran: "No legacies to staff. All Ladyship's men." Simon suggested that a man who said a thing like that could not be of sane and balanced mind, but the witness would not agree to this. Mr. Christie, he said, was very clear in his mind that Lady Rosamond had the receivership and that the staff had to obey her orders and to disregard his.

Simon pointed out to Mr. Oerton that the beneficiary under the new will, Mr. Otto Nicholson, was unmarried at the relevant date and that, if Mr. Nicholson should die without a son, the property would revert to Lady Rosamond and her son; whereas Mr. Oerton had said that Mr. Christie on no account wished the property to go to them. How, Simon asked, could the witness reconcile these factors? Mr. Oerton answered that his client had appreciated the possibility of intestacy, but that the witness had thought it remote. It was also suggested that, when Mr. Oerton visited Tapeley Park in May, 1930, the month after Mr. Christie's death, he had told the butler that this was going to be the biggest lawsuit that had ever happened, and that the butler would not enjoy being cross-examined by Sir Patrick Hastings. Mr. Oerton, however, denied any imputation that he had tried to intimidate or bribe the servants.

Many other witnesses, especially neighbours and servants, were called by Sir Patrick Hastings to say that Mr. Christie was perfectly sane, though overwhelmed by his wife. Some imagined that the conflict between husband and wife had developed out of occasions when he wished to do a generous act and his wife sought to save expense. They asserted that they had never before heard of the queer behaviour now ascribed to the dead man.

Altogether Simon was faced with a large body of adverse evidence. In his opening, however, he insisted that Mr. Christie had not been of normal mental balance even as a young man. Soon after the birth of his son, he had gone off to travel in the company of a doctor; when the bad attack

came in June, 1924, he screamed repeatedly for "Rosamond"; his sight was so badly affected that he flung himself about and bumped into walls and statuary; he refused all food, and the thought that he might require forcible feeding was one of the reasons for sending him to the home, where it was only by constant persuasion that his wife made him take some food. Dealing with the 1925 will, Simon said that the other side had to prove, first, that the testator was of full testamentary capacity and, secondly, that he knew and approved its contents. So far as these contents were concerned, Simon asserted that the will was inconsistent with the instructions given to the solicitor: it had been asserted that Mr. Christie did not wish his wife and son to benefit, but, as the will was drawn up, if Mr. Otto Nicholson had no son, the property would revert to them.

He went on to say that Lady Rosamond had undertaken the appallingly difficult task of looking after her husband when she might have avoided trouble by sending him to a home. He then put her in the witness-box, and she described her married life. Her husband, she said, had never cared for company, but had spent most of his time in country pursuits. In 1901 he told her that he had made a will leaving her everything; and both before and after that time she had spent her own savings upon improvements to the estate. Her husband had never seen the two Nicholson boys and, at the outbreak of the War, he had told her that she should choose an heir if their son and their nephew were killed. She described the severe stroke he suffered in 1918, which made him unable ever again to speak properly, and also the attack of June, 1924, when he threw a handbag at her and kicked the butler. He had been violent to her for some years past, but had also shown affection at intervals. She gave evidence to support the suggestions put to previous witnesses—namely, that he dribbled, festooned clothing on his bed, booted flowers from their places in the garden, and went about inadequately dressed.

Sir Patrick Hastings, cross-examining her with the object of showing that she had been mean and unkind towards her husband, put it to her that, "After all your years of married

life, you did not know the date of your husband's birthday?" Her reply was that Mr. Christie, through fear of death, hated having his birthday kept. She also told the court of various substantial gifts which she had made in his name to local charities.

The butler gave evidence which supported hers, to the general effect that up to 1918 his master had been normal, though reserved, but that after this the strokes had impaired his brain. Dr. Toye, the doctor who had attended him since 1901, described him as a man of fine physique and refined and courteous character, but declared that, from January, 1920, he had been suffering from a softening of the brain which would affect the higher mental faculties—logical thinking, memory, consciousness of the claims of kith and kin, and so on—even though he could manage to conduct a conversation within his own circle. "Me not understand," was his stock phrase for anything beyond his usual range of thoughts, said the doctor, and he had used this phrase when invited to discuss the War. Dr. Toye's view was that Mr. Christie had an unreasoning dislike of his wife unless he was ill, when he was full of loving regard towards her; and that in 1925, the date of the disputed will, he was not capable of understanding a complicated document. Lord Horder then gave evidence of seeing Mr. Christie in July, 1922. His opinion was that the latter was not certifiably insane at that date, though his business capacity was insufficient. Simon obtained the answer from this witness that he would expect Mr. Christie to deteriorate, while the Judge, on asking the witness about the old man's frenzied demonstrations, was told epigrammatically that "Anger is short madness."

Simon's speech on Lady Rosamond's behalf submitted the two points which he had made in opening the case: that the testator was not of testamentary capacity at the time he made the will of 1925, and that he did not know or approve of its contents. Testamentary capacity, as distinguished from any other form of mental capacity, he pointed out, involves understanding the nature and effects of the act of making a will, the extent of the property disposed of, and the claims to which the testator ought to give effect. To ensure the last of these qualifications, it was necessary (so

Simon quoted from a judgment of a famous Lord Chief Justice of England, Sir Alexander Cockburn) that "no disorder of the mind shall poison his affections, pervert his sense of right or prevent the exercise of his natural faculties; no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made." The other side, therefore, had to show that Mr. Christie in 1925 had recovered from his attack in the previous year and regained the mental capacity which he had formerly enjoyed.

Simon then argued that the will of 1901 was not a honeymoon will, but was made nineteen years after marriage; moreover, it stood uncorrected for twenty-four years, which showed that Mr. Christie until his illness had no intention of cutting out his wife. The instructions received by Mr. Pitts Tucker in 1922 were never acted upon, because, Simon suggested, the solicitor did not really regard his client as a man of full capacity. No doubt Mr. Christie was courteous and charming to friends at his clubs and elsewhere, but, "The place where we first lose control is in our own homes, because the inhibition which operates to prevent us doing unkind, harsh and disagreeable things is always strongest when we are with those whom we meet on terms of social intimacy, as distinguished from the intimacy of the fireside. This is not confined to people who are going out of their minds," Simon added philosophically.

He recalled that Mr. Oerton, too, had put off drafting the later will after receiving instructions and that during the attack of 1924 Mr. Christie had done extraordinary things, such as kicking an inoffensive butler; kicking his own doctor, who was an old friend; believing his pictures had been stolen; refusing food, and spitting at people. This last act, Simon declared, could only be attributed, in the case of a man of Mr. Christie's social position, to unsoundness of mind. Dealing with the will, he pointed out that no discussion had taken place on the draft of it, and that—though Mr. Christie, when asked why Lady Rosamond was not mentioned in it, said, "Provided for"—no one had asked him to what extent she was provided for. And he concluded his speech with a

review of the medical evidence, which, he claimed, showed that all who knew Mr. Christie, like the Visitors in Lunacy, had not credited him with business capacity.

Sir Patrick Hastings's answer to this was a challenge to the veracity of the widow and of Dr. Toye, and a claim that the 1925 will was supported by people who did not stand to benefit from it. He repeated the evidence of the local people that Mr. Christie had never done or said silly things; and he argued that, apart from the views of the little coterie who lived in the house, the picture of Mr. Christie presented in the witness-box was that of a completely sane man. Sir Patrick sought to show that Lady Rosamond had used violent language, but this scarcely met Simon's point that her husband had used violent behaviour as well. Sir Patrick's final points were that the will of 1925 was eminently reasonable, that Mr. Christie's son was already amply provided for and did not like Devonshire, and that the widow also had a sufficiency.

Lord Merrivale, giving judgment, said that he was satisfied that, despite the conflicting evidence, none of the witnesses had come there to deceive the court. The dead man had satisfied a number of people that he understood what they said to him in clubs, at local agricultural shows and in the streets; he answered salutations from friends, communicated with them and was responsive to the views which they entertained with regard to his treatment by his wife. But none of these things, the Judge went on, demonstrated testamentary capacity. As to Mr. Christie's feelings towards his wife, there could be no doubt that, during the last period of his life, they were summed up in the words, "Lady Rosamond hate me." One had to consider, however, whether any consecutive and coherent thought was present to his mind with regard to her, for, in the intervals between the violent outbreaks, he was still affectionate and still turned to her to the same extent as he had done in the past. "I am sure that in June, 1924," said the Judge, "Mr. Christie . . . was wholly insane and unaccountable for his actions. . . . I thought, till I heard Lady Rosamond, that he had approved the contents of the 1925 will, but, since hearing her, my

answer to that question is 'I don't know.'” And the burden of proof, he reminded them, was upon those who put forward the will.

He turned to the question: Was Mr. Christie of sound testamentary capacity? In answering this, the Judge accepted the evidence of Dr. Toye and Lord Horder and the other medical experts and found that the testator was suffering from a progressive disease which affected his mental faculties and caused an insane delusion that his wife and son hated him. His Lordship therefore pronounced against the will of 1925 and for that of 1901.

Simon had won.

§

His next outstanding case was when he appeared before the Court of Criminal Appeal to argue Lord Kysant's appeal against a sentence of twelve months' imprisonment passed on him at the Old Bailey in the summer of 1931 for publishing a false prospectus. These last words are, to be sure, a very bald way of summarising a complex and highly technical charge, and, inasmuch as a great deal of Simon's argument concerned the actual wording of the Act under which his client had been convicted, I think the best thing is to set out in full Section 84 of the Larceny Act of 1861:

Whosoever, being a Director, Manager, or Public Officer of any Body Corporate or Public Company, shall make, circulate, or publish, or concur in making, circulating, or publishing, any written Statement or Account which he shall know to be false in any material Particular, with intent to deceive or defraud, any Member, Shareholder, or Creditor of such Body Corporate or Public Company, or with intent to induce any Person to become a Shareholder or Partner therein, or to entrust or advance any Property to such Body Corporate or Public Company, or to enter into any Security for the Benefit thereof, shall be guilty of a misdemeanour, and being convicted thereof, shall be liable, at the Direction of the Court, to any of the Punishments which the Court may award. . . .

The prospectus in question was issued in 1928 and related to an issue of £2,000,000 5 per cent. debenture stock of the Royal Mail Steam Packet Co., of which Lord Kylsant was a director, and which had since met with serious reverses. It stated that the fully paid capital of the company amounted to £8,000,000, that there was debenture stock of a certain amount, and that the reserve fund was £1,450,000, and the insurance fund £1,311,755; and went on to say that the proposed issue was to provide capital for the company's new freehold building and for the general purposes of the company. After giving the number of ships owned by the company and its subsidiaries, it proceeded as follows:

"The interest on the present issue of debenture stock will amount to £100,000 per annum. Although this company, in common with other shipping companies, has suffered from the depression in the shipping industry, the audited accounts show that during the past ten years the average annual balance available (including profits of the insurance fund), after providing for depreciation and interest on existing debenture stocks, has been sufficient to pay the interest on the present issue more than five times over. . . .

"After providing for all taxation, depreciation of the fleet, etc., adding to the reserve and payments of dividends on the preference stock, the dividends on the ordinary stock during the last seventeen years have been as follows." It then gave a table showing that dividends varying between 5 per cent. and 8 per cent. had been paid between 1911 and 1927, except in 1914, when none was paid, and in 1926, when only 4 per cent. was paid.

The prosecution at the Old Bailey admitted that every statement in this prospectus was true, but they alleged that, as a whole, it was false and misleading because it omitted to state that, though very large profits had been made in the boom years of 1918 to 1920, very great losses had been sustained during the next seven years. Indeed, the company had only been able to pay the dividend and to produce the "balance available" item in those lean years by introducing sums of a non-recurring nature earned in the abnormal War and Armistice period. (These included repayments of excess

profits duty, adjustments of income-tax reserve, War-contingency reserves, deferred repairs account, etc.) Mr. Justice Wright, who tried the case, held that a document may be fraudulent in the sense of what it conceals or omits, as well as in the sense of what it states; so that, even though every word and figure be true, a document may yet be false as a whole because of what it falsely implies. On this the jury had found Lord Kysant guilty, and he was sentenced to twelve months in the second division.

Two future Judges appeared with Simon in the Court of Criminal Appeal, in the persons of Mr. John Singleton, K.C., and Mr. Wilfred Lewis. The Crown was represented by the Attorney-General, Sir William Jowett, and Mr. Eustace Fulton. The Judges were Sir Horace Avory, Sir George Branson, and Sir Travers Humphreys. The grounds of the appeal were, first, that there was no evidence that Lord Kysant had committed the offence specified by the section of the Act quoted, and, secondly, that the Judge had misdirected the jury by saying that the prisoner could be guilty of an offence under this section even though no specific statement in the prospectus was false.

Simon began his argument by asserting the strong point of his case—namely, that every word of the prospectus was true. Turning to the matter of misdirection, he went in detail through the relevant section of the Act (which I have set out above), claiming that it did not penalise mere economy of information. The only question, he argued, which arose under the section was, “Does this document contain a statement which is known to be false?” It did not matter if a more complete survey of the facts might colour the statements made, unless the new information falsified the old; the prosecution, Simon said, must show either that the words used in the prospectus were themselves false—and this was already admitted not to be the case—or that they would be rendered false by the addition of the particulars omitted. But, he pointed out, every word in the Kysant prospectus would remain true even if additional particulars were given.

He then gave a rather extreme illustration of his meaning. Suppose a coal-mining company inserted in its prospectus an

engineer's report that work at the mines was making excellent progress, but omitted to mention that the mine had since been blown up, this would be an omission which would make the prospectus untrue. But there was nothing like this in the Kysant prospectus. He added in his client's favour that the latter had never anticipated profits (in the sense of counting his chickens before they were hatched) and had not paid out a penny in dividends beyond what the company was entitled to pay. On the other hand, he had expected an improvement in trade in 1928 because conditions were then due to become favourable, and he had acted on this expectation to the extent of putting his own money into the debentures. Simon also referred to the fact that even the new Companies Act of 1929 did not provide that a prospectus must contain every fact which might influence the investing public; still less, he said, did the Larceny Act of 1861 make it a criminal offence to omit something or other which somebody or other might like to know. He therefore criticised the summing-up at the trial for omitting to say that the section did not punish an omission unless this omission falsified the stated facts, and for omitting to say that there was a definite limit within which such unstated items could falsify the others.

This was a very clever point, both because (to use appropriate terms) of what it involved and of what it omitted. A less subtle advocate might have been tempted to argue that the Larceny Act did not in terms penalise omissions *at all*, and that, consequently, anything could be omitted from a prospectus. But this would have been fatal, because no Judge would be likely to accept the proposition; so Simon conceded part of the prosecution's argument and thus strengthened his case in regard to the rest.

He proceeded to say that the jury should have been directed that they would not be justified in convicting merely because they thought something might properly have been added to the prospectus; the question before them was not what *they* would have inserted if they were now rewriting it. Answering questions put to him by the Judges, Simon insisted that the section did not penalise a misleading impression as such; it only penalised a misleading impression *produced by a false*

statement. The reader may care to turn back to the actual words of the section to appreciate this point.

Taking another ground, he said that Lord Kysant had no knowledge of any falsehood contained in the prospectus. Simon submitted that, when one said the *average* product over a period of years is a certain sum, one implies that some years have produced more, and some less; otherwise the word "average" would not be employed, but one would say that each year has produced the stated sum. More specially was this the case in relation to years which included the Armistice period, which everybody knew to have been boom years for shipping. He concluded with a mild reproach to the Old Bailey jury. One could understand, he said, that a City of London jury felt strongly about the disaster which had notoriously overtaken the Royal Mail Steam Packet Company and its investors, and perhaps the jury had found difficulty in distinguishing between the crime of issuing a prospectus containing a false statement and the wholly different question whether a fuller prospectus might have altered the minds of intending investors. It was, after all, very difficult for a jury in the depression of 1931 to view such a matter with the eyes of a reasonable man in 1928.

Sir William Jowett, for the Crown, dwelt on the significance of the word "false" as used in the phrase of the section, "false in any material particular." He asserted that a false document meant a document which conveys a false impression, and that the whole document—not merely its separate items—must be taken into consideration when assessing the impression made. (It may be noted that this did not quite meet Simon's point—namely, that the section did not penalise "economy of information," contained no reference to omissions, penalised a director only for making a statement which he knows to be false "in any material particular," and, while penalising the falseness of any individual item, does not penalise the giving of a false impression.) Continuing, the Attorney-General pressed home his argument about the impression given by the prospectus. He said that it gave the impression that people could safely invest their money in the company, though in point of fact dividends for the past seven

years had been paid only by recourse to funds stored up in abnormal years. "The sort of laxity which this document shows must be stopped," he said.

When Simon came to reply he drew a weighty distinction between trading profits and reserves. The prospectus never said or implied that the dividend had been paid out of trading profits. It was quite possible for a company to have a large balance available in a particular year even though a trading loss had been made. The company's dividends had been paid out of such a balance, as was legally permissible, and nobody could have been led by the prospectus to assume that they necessarily came from profits. Had investors desired further information, Simon suggested, Lord Kysant would willingly have given it to them. He ended, however, by commenting that "this painful trial has called most specific attention to the desirability of more information being given in such documents, and nothing which I have said must be taken to the contrary." Such a hope for the future, to be sure, could in no way harm his client's case, and by its sweet reasonableness it perhaps helped to increase the force of his previous arguments.

Giving the judgment of the court, Mr. Justice Avory said that there was sufficient authority in precedent to support Mr. Justice Wright's summing-up and that there was ample evidence on which the Old Bailey jury could arrive at their decision that the prospectus was false in a material particular, because it created a false impression; this falsity consisted in presenting figures which appeared to reveal the company's position, but in fact concealed it, thereby implying that the company was in a sound position and that investors could safely take up its debentures. The most misleading item of all, he remarked, was the statement that dividends had been regularly paid even in bad times, when actually they had been paid only out of boom-time reserves. He held also that there was ample evidence on which the jury could find Lord Kysant knew that the prospectus was false in the way alleged. So the appeal was dismissed; but Simon's point was never met.

CHAPTER FIFTEEN

THE political skies grew more and more threatening in the two years of Mr. MacDonald's second Labour Government. Everybody knew that, chiefly through the economic slump, but partly through the increasing demands of its followers, the Government was slipping at an ever increasing pace towards economic bankruptcy, while, on the intellectual side, it was caught in a cleft stick between its revolutionary official programme and its acute realisation that even reform was becoming difficult to introduce. There seemed no way of arresting this decline: the sixty Liberals in the House of Commons showed no inclination to combine with the Conservatives and vote the Labour Party out of office; instead, they came time and again to the aid of the Government, which began to look as if it might last for its full five years. How much Mr. Lloyd George and Ramsay MacDonald secretly consulted in those days may never be known, but again and again it was some adroit move by the "Welsh Wizard" which saved the Government from defeat. At length Simon repudiated the Lloyd George lead. When Philip Snowden, the Socialist Chancellor, proposed a new tax on the capital value of land, and Simon riddled it with criticism, pointing out that the plan differed in essentials from that of the Lloyd George Budget to which he had given his support, Mr. Lloyd George explained that the difference was due to the fact that he had shown too much meekness in 1909.

"Meekness?" retorted Simon briskly. "That is the very last virtue to which my right hon. friend can lay claim; and, after all, what would be the use of it? The blessing promised to the meek is that they shall inherit the earth; what is the good of that if God has given the land to the people?"

The House—and the country—looked on with increasing interest while the rift between the two Liberals widened. Lloyd George addressed a Liberal Convention at Buxton, and ended with a peroration which declared that he and his

friends would yet steer the Liberal ship into port in order that it might "present its Bill of Lading to the Great White Throne." Buxton, Simon commented acidly, "is not one of our major seaports, and perhaps its inhabitants do not realise that Bills of Lading are not presented *by* ships; they are presented *to* ships," and he went on to ridicule what he described as "this preposterous mixture of bad law and the Book of Revelation." The breach in the Liberal ranks was evidently not going to be healed.

Meanwhile the financial crisis deepened and some at any rate of the Liberal band determined that they could not any longer acquiesce in the policy of keeping the Socialist Government alive by Liberal votes. In the Spring of 1931, Simon spoke at a great meeting in the Free Trade Hall, Manchester; he deplored the perils of continued Government extravagance and of an unbalanced Budget, declared that the situation in its inherent gravity and possible outcome was comparable with the situation at the outbreak of the War in 1914, and gave his reasons for thinking that there must be some resort to tariffs as a remedy. This speech naturally shocked many of his old-time Free Trade colleagues—but not all. I shall set out his arguments a little later, when I come to describe his two House of Commons speeches on trade questions after the formation of the National Government.

For at last, in August, the Cabinet broke up, and one section, led by the Prime Minister, Philip Snowden and Mr. J. H. Thomas, called in the leaders of the other parties to form a Coalition. The other section, led by Arthur Henderson, Mr. J. R. Clynes, and Mr. Lansbury, though no less alive than their colleagues to the hopelessness of the economic situation, did not wish to see the political progress of a generation thrown away in what might prove to be only a momentary crisis. It may be taken for granted that the amazing bitterness which afterwards arose between the two wings of the old Labour Party did not exist among these old comrades at the outset.

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One of the first measures of the stopgap Coalition Government was to institute a tariff wall round the country. in the

hope of checking the adverse trade balance. Simon, who all his life had been a Free Trader, approved this course in two closely reasoned speeches in the House of Commons on September 15 and 23. He had taken a vast deal of care and trouble to inform himself on the figures and arguments involved, and these speeches received the attention which the House gives only to those who know what they are talking about. Anybody who reads them afresh may detect in them a tone of detailed exposition of economic problems proper to a future Chancellor of the Exchequer, though at that moment no one, and least of all Simon himself, could have guessed that he was a few years later to be at the Treasury.

His main theme was that a new financial centre of gravity must be found, since the balance of trade, which for at least two generations had been favourable to this country, was now unfavourable. He therefore analysed the course taken by the figures which measure trade balances and traced the decline in the "invisible exports" which had hitherto been sufficient to keep this balance on the right side. Thus, in the course of the first of the two speeches, he said:

Consider three figures selected for three separate years. Take the year before the War. In 1913 the adverse visible balance on our external trade was £158,000,000. What was the sum total of our invisible exports in 1913? If you add together the remunerations on foreign account for services, with the interest on foreign investments, it was no less than £339,000,000. Therefore that left a balance, after completely meeting the cost of imports, available for re-lending overseas, of no less than £181,000,000—a very strong position. The Committee may be glad to know that the £181,000,000 was not very far off the total unearned foreign income of the year. We only drew upon our unearned foreign income to the extent of £29,000,000. One-sixth was needed to settle the account, and the remaining five-sixths was available for investments. Pass to 1928. Of course values vary enormously, but the proportions can be seen. What was the adverse visible balance as found by the Board of Trade

in 1928? It was put down at £358,000,000. That had to be met out of the invisible exports. Out of what sort of invisible exports was it met? If you have set against it all the earnings of shipping, of banking, of insurance, all the commission business in London, you have also to rely on no less than £133,000,000 of unearned foreign income before you have paid your interest. You are left, not with five-sixths, but only with one-half—some £137,000,000 more of interest on foreign investments available for re-investment. That was 1928. Take 1930. The adverse visible balance of trade, according to the Board of Trade figures in 1930, was £392,000,000, and, in order to pay off, to cancel out, that adverse visible balance, we had no option but to add in with the remuneration for services the whole of our foreign investment income except some £39,000,000. In other words, five-sixths of our interest on foreign investments was necessarily set off in account in that way.

The explanation, of course, is, first, the very heavy drop in exports of goods. Taking values, British exports which were £844,000,000 in 1928 dropped to £657,000,000 in 1930, and this was combined unfortunately with a contemporary drop in remuneration for services, like, for instance, shipping, which dropped from £130,000,000 in 1928 to £105,000,000 in 1930. I do not believe that any business man, any thoughtful citizen, any man or woman who cares to follow these figures can fail to come to the conclusion that a very serious change has been gradually taking place which makes us deeply anxious for the future. Much has been said in denunciation of the rentier. In point of fact, the British working-class family which has been maintained so largely by imported food and other imports of recent years, has had that food paid for very largely owing to the circumstances that Britain herself was able to rely on her position as a rentier and to bring in the interest on her foreign investments.

And what, he asked, were the prospects for 1931? It was certain that, unless some step was taken to prevent the con-

tinuance of the current process, "not even the whole of our income from foreign investments, added to the remuneration for services, will suffice to fill the gap and pay for the imports of the country." He confessed that for many years he had preached, as a Free Trader, that "exports pay for imports," but "while this has been true throughout our past history, it is not going to be true this year." So what ought to be done? There was no hope that our foreign investments would recover within a quick enough period to save the country from its embarrassments. "No help there!" Nor, in regard to the other "invisible export," could we hope that services rendered abroad by our banks and our ships would bring in an immediate and increased remuneration at a moment when trade everywhere was in the doldrums. "No help there!" It followed, therefore, that one had to attack the two other elements which remained: either the visible exports or the visible imports, or both. And so Simon came to the crux of his argument:

Nobody doubts that steps, long-distance steps, might be visualised and ought to be taken to try to make exports better, but does anybody say it can be done between night and morning? Does anybody say it can be done with the sort of rapidity with which the flight from the pound might take place? That seems to me a perfectly impossible proposition. Whatever steps might be taken to stimulate production in this country for foreign sales could not have an immediate effect and would indeed do exceedingly well if for the time being they stopped the continual drop in our exports. I find myself—I take no pleasure in it—driven to the conclusion, as I can see it, by a pure course of deduction and reasoning, that if it is true that our broad condition has changed in connection with our oversea trade; if it is true that even when you bring in the whole sum total of invisible exports and add it to our sales, you cannot make a figure which pays for our imports; if it is further true that it is absolutely necessary to stop the consequences which might follow; I ask myself and I ask my colleagues in the House, if these

facts are true, is there any alternative but to insist upon putting at once some block in the way of the flow of free imports?

He still did not believe, he concluded, that a system of tariffs would make a new heaven and a new earth; he had heard too much rubbish of that sort spoken in the old Tariff Reform days to be likely to echo it now, but, for the reasons he had given—and they were, of course, much fuller than I have been able to indicate in these pages—he was bound to say that “I believe we are forced in the circumstances to abandon in this emergency the system of free imports.”

His second speech, a week later, had to deal with a new state of affairs. On the previous occasion the Government had been seeking to keep the pound on the Gold Standard; in the interval the task had been too great and the pound had slid down the golden ladder. Critics of the Government, therefore, and especially the doctrinaire Free Traders were now arguing that there was no longer any need to apply tariffs because, in the changed circumstances, the country's balance of trade would automatically right itself. Simon's chief task in the second speech was to expose the incorrectness of their view. For example:

It is said that, if you suspend the Gold Standard, the balance of your external trade will look after itself; that, if sterling is not tied to gold, then any difference of level will be adjusted, just as the difference of level in two bodies of water would be adjusted if you pulled up the sluice between them; and that, if we get rid of the Gold Standard, the trade balance will necessarily come right. It might be first observed that that does not appear to be the lesson that one would gather from the recent experience of Europe. The experience of those countries in Europe which found their financial position increasingly difficult and suffered from continual depreciation of currency was this: As long as the depreciation of their currency continued and went worse and worse, to that extent undoubtedly it operated as a bounty on their exports. But when at length by tremendous efforts, by

assistance from other and more favoured countries, one or other of these communities in Europe succeeded once again in holding their currency at a given figure so that it depreciated no more, this operation of the bounty on exports and a block on imports ceased. It is not the fact that your currency to-day is at a lower figure than it was yesterday which tends to give a bounty on exports; it is the fact that it is going to be lower still to-morrow.

The lesson, therefore, which may be drawn from the experience of Europe is this: That, when at length those countries did succeed in fixing the value of their currency at some new and low figure, it was not in the least the case that they had an adjusted trade balance. Every one of them had an adverse trade balance and every one of them needed assistance from outside in order to get right. There is a second consideration. Those who use the argument that we need not trouble any more about the adverse trade balance because we have suspended the Gold Standard seem to assume that Britain can go through that tremendous operation which we authorised in a few hours on Monday without other countries doing the same. But inasmuch as all these things are relative, it is impossible to argue as to what is going to be the outcome of all this when so many other factors are obviously and constantly changing.

But I go further. Before I could accept the proposition that going off the Gold Standard will have all the effect which a check on imports deliberately enacted by Parliament might secure, I would want to call attention to this distinction. Going off the Gold Standard for the time being operates no doubt as a block in the way of foreign imports, but it is a perfectly indiscriminate block. In so far as it operates like a tariff, it is a tariff on food and on raw material to exactly the same extent as it is a tariff on the most highly finished articles and manufactured luxuries. Unless it is to be said that in these matters the best thing to do is to fling yourself upon the reactions of world economic forces, that really on the whole chance will do better for you than the best that

you can do by intelligent thinking for yourself, I should find it quite impossible to accept the view that the removal of the Gold Standard provided all that is needed. Some people think it might be provided—and others fear it will have to be provided—by the intelligent and discriminating restriction of imports.

And the peroration of his speech contained a statement of Simon's belief that, everything else apart, it was essential that the Government of the country should be accorded not merely confidence, but confidence "in a quite unusual degree." The significance of these words lay largely in the fact that Simon and a large group of his fellow-Liberals in the House had decided to throw in their lot wholeheartedly with the new administration, especially at the General Election which had been decided on.

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Already Mr. Hore-Belisha had had the idea of persuading all the Liberal Members who agreed with Simon and himself in their view of the crisis to sign a manifesto to the Prime Minister assuring him of their unconditional support for any emergency measures which the Government should think fit to introduce. Then (so Mr. Geoffrey Shakespeare, the future National Liberal Party Whip, revealed afterwards) Simon said to one or two of his friends, "The election is upon us, and we Liberals who think alike must get together and form an organisation. We must do it now." Within four days the Liberal National Party was founded, financed, housed and staffed and was selecting its candidates for the election. Forty-one candidates went to the polls. It was their endeavour to give unswerving support to the MacDonald-Baldwin administration, and they declined to take part with Sir Herbert Samuel and his friends in the protracted search for an improbable formula on which both Free Traders and Protectionists could agree.

Simon took part in the campaign all over the country, beginning with a huge and enthusiastic meeting in the Usher Hall in Edinburgh. This was the first General Election in which nightly broadcast appeals by political leaders were



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MRS. EDWIN SIMON
(Mother of Sir John Simon.)

heard in nearly every house and had an immense influence on the result. Philip Snowden's onslaught on his former colleagues and Socialist friends had a remarkable effect; the ether had never before reverberated with such violent and contemptuous denunciation. Two nights previously, on October 16, Simon had had his turn, and addressed an appeal to Liberals which was not less persuasive because it was couched in less pungent terms.

One passage is still remembered by many hearers. It was his mother's birthday, and the old lady had her wireless set in the little house in Pembrokeshire, where she had invited two or three village neighbours to join her in "listening in." Her son was speaking of the responsibility to vote which lay on everyone, "from the young man now about to exercise the duty of the franchise for the first time, to the old lady, celebrating, it may be, her eighty-fourth birthday to-night, sitting in her arm-chair, by the fireside, away down in the quiet country listening to me." There was a little pause, and he learned afterwards how Mrs. Simon flushed at the words and whispered in surprise, "Do you know, I think that was a reference to *me*!" The broadcaster was not a little astonished to discover, however, in the spate of letters which follow all such broadcasts, two or three from aged dames of whom he had never heard, all supposing that the reference was personal to themselves.

In the Spen Valley he had this time no reason to fear defeat, though he can hardly have foreseen the huge majorities which were to be cast all over the country against the opponents of the Coalition. Mr. Maxwell Fyfe again stood down as Unionist candidate and spoke on Simon's behalf. The Socialist candidate, Mr. Elvin, tried to gain local Liberal support by denouncing his opponent as being indistinguishable from a Tory, which explains why Simon's final appeal to the electorate read:

"I AM A LIBERAL"—

THIS IS SIR JOHN SIMON'S ANSWER

TO THE SOCIALIST CANDIDATE'S LATEST MISREPRESENTATION

VOTE FOR SIMON!

Mr. Elvin also tried the old electioneering dodge of challenging his opponent to a public debate, a device which in industrial districts invariably means a triumph for the candidate with the noisier supporters. Simon replied (and I recommend his reply to other candidates in similar circumstances), "If you really take the view that your challenge necessitates a personal meeting as in a duel, I believe that the challenged party has the choice of time and place and weapons. I therefore select next Tuesday between 8 a.m. and 9 p.m. as the time, the polling-booth as the place, and the votes of the Spen Valley electors as the weapons."

The result of this encounter was:

Simon	...	...	...	28,647
Elvin	...	...	...	15,691
				<hr/>
Majority				12,956

Shocked by his overwhelming defeat, Mr. Elvin told his supporters that he had been forewarned that Simon was an unscrupulous opponent and that events had borne this out, and shook the ungrateful dust of Spen Valley from his feet.

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Simon led thirty-five National Liberals back to Westminster as wholehearted supporters of the Government; Sir Herbert Samuel brought a similar number of Liberals who qualified their adherence to the Government by a demi-virginal advocacy of Free Trade. These, with 470 Unionists and thirteen of Mr. MacDonald's new National Labour Party, confronted an Opposition consisting of only fifty-two Socialists and Mr. Lloyd George's family party of four. As soon as the results were known, the Prime Minister formed and announced his Cabinet. Lord Reading (who had passed his seventieth year) had served as Foreign Secretary during the four months' interregnum which followed the downfall of the Labour Government, but Mr. MacDonald now wanted the post to be filled by a younger man drawn from the Liberal

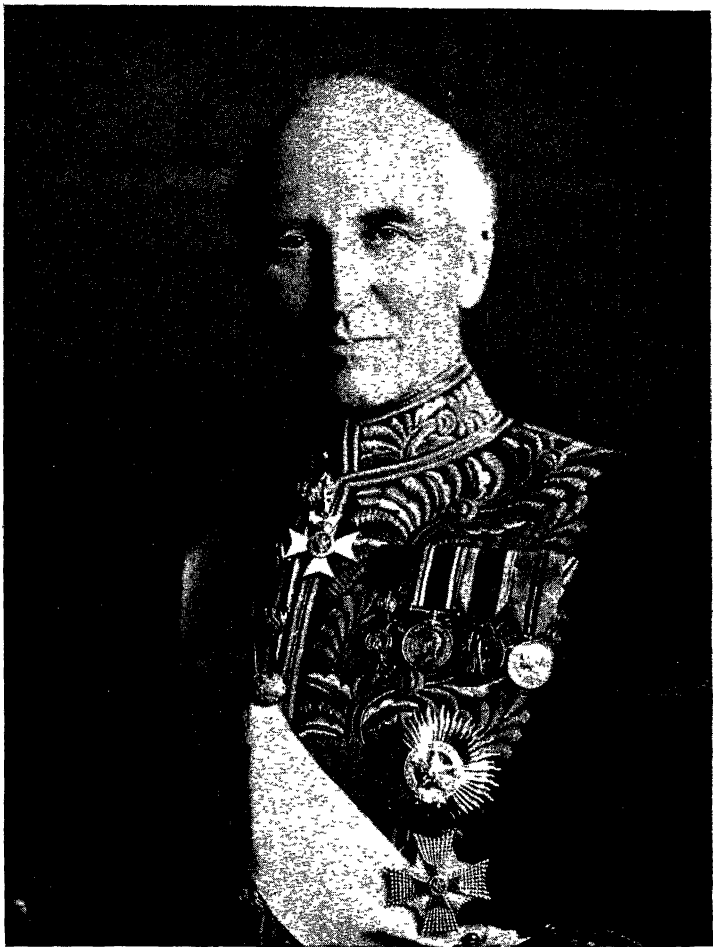
side, and the lot fell on Simon. His appointment was one of the surprises in the list—not least to himself—for, though his Cabinet experience was longer and more varied than that of most of his colleagues and he had frequently taken part in debates on foreign questions, his contacts hitherto had been mostly with the domestic side of policy. He had, however, two not very usual qualifications in British Foreign Secretaries: he had travelled widely in Europe and beyond, and he was an industrious linguist. Besides being a brilliant classic at Oxford, he had all his life taken opportunities to add to his acquaintance with modern tongues; for example, he has been able to lecture in French to a Parisian audience on the British constitution—he told them (it was in March, 1935) that it was just as easy to have a good Parliament as a good lawn, “only you must first look after it for three hundred years”—and to broadcast to all French stations on King George V.’s death in 1936. He knows enough Spanish to make a speech in that language, while on his way back from one of his Indian trips, during which he worked a little on Hindustani, he passed his leisure hours in learning the rudiments of Japanese from an obliging native of that country. Unfortunately, he learned later, this gentleman had taught him a kind of Japanese alphabet which is only used by children up to the age of six.

He remained Foreign Secretary till June, 1935, three difficult years which were destined to bring much disappointment and disillusionment in the international field, and not least to those idealists who had assumed that world-peace was on the verge of being established by a collective policy which would succeed in repressing all aggression by resolutions conveying threats of counter-action, without involving this country—or any other friend of peace—in any risk of war. Such a conception might perhaps have been realised in a world-wide League of Nations in which no country laboured under serious grievance and every country had effectively equal rights and was prepared to assume equal duties. This was certainly not the case when Simon took office, nor was it ever within the range of possibility. The United States had always refused to join the League, while in Europe the ancient

enmity between France and Germany remained unappeased. The British Government, though no less devoted to the principles of the League than were its Parliamentary opponents, was bound to face difficulties and dangers which seemed to make no impression at all on the minds of the more bellicose pacifists in the country and at Geneva.

It was natural that Simon, as Foreign Secretary, should come in for some of the criticism from those who had hoped for better things; he shouldered his full responsibility in the House of Commons again and again, and put up a defence for Government policy which subsequent experience has gone far to justify. It is, to be sure, foolish to imagine that he and he alone was responsible. Before the War foreign policy lay largely in the hands of the Foreign Secretary and Prime Minister alone, but nowadays it is the first and most important business at nearly every Cabinet meeting and the course taken is decided on by the Government as a whole. Certainly, too, Ramsay MacDonald, with his past experience and unflagging interest in international questions, was the last man to give anybody else a free hand: but, even if the Prime Minister had been more pliant, the rest of the Cabinet would still have had its say. However, the Minister in immediate charge of the Foreign Office must always expect to shoulder the blame if sanguine hopes are not realised, and Simon could not complain if he was criticised. Nor did he.

But it was silly to reproach him for not being sufficiently Palmerstonian, sufficiently "firm" towards other nations. A modern Palmerston would have to win over his Cabinet colleagues to his views before he could shake his fist in the face of the world, and it may be presumed that they would tell him that the British electorate is no longer ready to back a policy based on the threat of war at any time, anywhere, and with anybody. They would doubtless add that, however superior to all other nations the British forces were in Palmerston's time, it would scarcely be prudent for even the best armed nations nowadays to show too bellicose a spirit, because such inventions as the aeroplane and the submarine have drastically altered the odds of success and even more drastically enlarged the sphere of possible hostilities.



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FOREIGN SECRETARY, 1931

In short, a Palmerston to-day who tried to renew his policy of a century ago would be not in the Cabinet, but in a mad-house.

Let us now recapitulate the chief incidents of Simon's period at the Foreign Office.

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In February, 1932, the long anticipated Disarmament Conference opened at Geneva under the presidency of Arthur Henderson, with whom, from first to last, he maintained the closest touch. The economic depression which began in 1929 had caused an intensification of the spirit and practice of nationalism and, as Mr. Henderson himself afterwards declared, "the Disarmament Conference did not begin its work when it should have done—in 1925. Then it had the correct atmosphere. Six years later, when the work was begun, the atmosphere had changed." The conflict between France's demand for Security and Germany's claim for Equality was intensified and had become the ground-swell of every movement of the tide at Geneva. A Preparatory Commission had been sitting for several years in the effort to draw up a skeleton Disarmament Treaty. An elaborate document was the result, with schedules which were to contain the numerical limits of the armed forces of all the states in the world. Wherever such a number was to appear, a blank was left which it was the task of the Disarmament Conference to fill up. In the early discussions Simon pointed out that what was needed was some scheme or method by which these figures might be arrived at—and no such scheme was in existence. He declared the belief of the British Government that progress was more likely to be achieved by seeking agreement between the principal Powers on qualitative disarmament—*i.e.*, by first seeking limits of size to various weapons and by abolishing others altogether. He said.

As practical men we must recognise, as it seems to me, that limitation of armaments by international agreement can only be brought about by the use of one or both of two methods of treatment. One is the method of fixing

maximum limits beyond which we severally bind ourselves not to go; the other is the method of excluding by international agreement from use in warfare certain defined instruments or methods, and for both these modes of treatment we require, as a further safeguard, some international authority which will effectively secure that these limitations are not over-stepped, by ascertaining and making known cases of transgression with a view to bringing effective world pressure upon the wrongdoer.

I desire to announce on behalf of the Government of Great Britain that we advocate both these methods of treatment, and will do our utmost, in loyal and friendly co-operation with the other States of the world, to help to devise and bring into effect plans to apply them.

A resolution approving this proposal was put forward by the British Delegation and was one of the first results registered at Geneva.

The complications of the task soon became apparent. The First Lord of the Admiralty advocated on behalf of the United Kingdom the abolition and prohibition of submarines—by the Treaty of Versailles Germany was not allowed to have any—but various delegations replied that they must retain them for defensive purposes. President Hoover's outline of proposals came forward in June, and the British Government issued a statement which "most cordially welcomed his plan" and advanced proposals for a comprehensive scheme for qualitative disarmament. The British Government statement pointed out that the reduction in all three arms of the British forces had been incomparably greater than any which had been effected elsewhere, outside the countries that had been disarmed by the Treaty of Versailles. Nevertheless, it went on, "The British Government are ready and eager to join in the further measures of disarmament for which general agreement can be obtained." It is not out of place to recall to-day that on July 21, 1932, Simon, on behalf of the United Kingdom delegation, declared that the British Government were prepared to go to any length, in agreement with other countries, to prevent bombardment from the air,

and he proposed qualitative and quantitative restriction of military and naval aircraft, as well as a set of rules to prevent the misuse of civil aircraft for military purposes.

These efforts to reach agreement were rudely shaken by Germany's decision to withdraw from the Conference until she had been granted "equality of rights." Neither the National Government nor Simon, its Foreign Secretary, could be held responsible for that! The Treaty of Versailles allowed Germany neither submarines nor military aircraft and put many other special limitations upon her armed forces. She was not prepared to resume discussions until she was put on exactly the same footing as the victors as to the kinds of arms she might possess. After much negotiation with France and other Powers, Simon put forward proposals for limitation which might be applied in stages so as to satisfy Germany's claim and still meet the anxieties of France. At length, in December, 1932, at a meeting between the representatives of Great Britain, France, Italy, Germany and the United States of America, over which Mr. Ramsay MacDonald presided, a declaration of "Equality of Rights in a Regime of Security" was adopted, which had the result that Germany returned to the Conference. So the first year of this Sisyphean task ended with a considerable diplomatic success.

It soon became evident, however, that, though Germany had returned to Geneva, no further progress could be made by framing general declarations. The difficulty lay in their practical application. M. Tardieu wittily observed that "the verb 'to disarm' must be classified by grammarians as a 'defective verb'; nobody would say '*we* disarm,' though they were very ready to say '*you* should disarm' or '*they* must disarm.'" The British delegation had a special difficulty to contend with. Britain had already made substantial reductions in her armaments compared with her defences before the War; but this country was the only great Power that had made such reductions. Mr. Lloyd George, in a much-quoted speech, summed up the situation thus: "All the trouble that has arisen in Europe has come from a flagrant breach of that undertaking [at Versailles] by all the victors except one. Germany disarmed; Britain followed and even anticipated

that process of disarmament, but she stood alone in carrying out her obligations. Every other country that signed the Treaty rearmed. Their armaments are more powerful to-day than they were in 1914, and among these countries are not only France but the United States of America!"

Simon told the House of Commons that our unilateral disarmament in advance of reductions by others had not made general disarmament any easier to secure: "You do not always induce other people to change their habits by pointing to your own virtues." The proposition was not welcome in all quarters at the time, but it is now generally recognised that our effort to secure reductions all round was not helped by the fact that we had set the example; the fox in the fable who had lost his tail found it difficult to persuade the rest of the pack to do likewise. In the atmosphere of 1933 an agreement which would make France weaker and Germany stronger, while our own forces would not be increased, gave grave anxiety to many people who were sincere friends of peace. The British Government, therefore, in March, 1933, took the bold step of putting before the Disarmament Conference a complete Draft Convention of many clauses, which included all points on which there seemed to be general agreement and which proposed definite figures for the number of effectives and the maximum size of guns and tanks to be retained by the European Powers. For the first time the size of the different forces was the subject of definite figures in a Draft Treaty. The proposal included the total abolition of military and naval aircraft, subject to a satisfactory agreement being reached for the supervision of civil aviation to prevent its misuse for military purposes. Failing this, definite figures were proposed for the number of aircraft to be retained by the principal Powers. The schedules applied the provisions of the proposed Disarmament Treaty to Germany and the other defeated Powers no less than to the rest.

This was the culminating point of the Disarmament Conference on which such high hopes had been built. The Prime Minister came out to Geneva to present the British plan with all his authority, while it was Simon's job to argue for it and to press it. The risks that the Foreign Office were running in

proposing definite figures of limitation for a whole series of States were obvious enough, but the boldness of the effort was justified by the failure of earlier methods to produce concrete results. The British Draft Convention gave new hope of achieving something final; it was adopted by the Conference at Geneva as the basis of the future Convention. It was indeed the only basis of the discussion thenceforward. It received the blessing of Lord Cecil, the outstanding figure in the League of Nations Union. Mr. Norman Davis, the distinguished representative of the United States, declared that his country was prepared to give its full support to the adoption of the plan. When Simon expounded it to the House of Commons it was widely and generally approved. It seemed possible, after all, that this bold British initiative might bring success.

Why did it fail? Because it gradually became submerged in a flood of detailed discussions, accompanied on every hand by endless reservations made by various Powers and their representatives. The mills of Geneva grind slowly, and they grind exceedingly small. The various anxieties and difficulties of different States, all pulling in different directions, ultimately deprived the plan of the unity of support it had first seemed to enjoy. Germany would not agree to abide by the Versailles restrictions on the size of guns unless other Powers did the like; yet some of the more highly armed Powers were not willing to abandon guns of a size larger than those permitted to Germany by the Versailles Treaty. Again, that Treaty had prohibited to Germany the possession of any tanks, yet there were some Powers who were not prepared to conform to a common plan. It was on objections such as these, tragically futile as they seem to-day, that the British plan ultimately foundered. The classic controversy between Equality and Security was its undoing. Simon analysed that conflict in the House of Commons:

The central political issue is how to reconcile Germany's demand for equality with France's desire about security. Regarded as a direct issue, that is a question between those two Powers and their respective peoples. It is a

terrible problem, charged with the most potent and persistent of all the historic influences which divide nations. That is *memory*—the memory of invasion on the one hand and the fear which it leaves behind, the memory of defeat on the other hand and the resentment and sense of humiliation which it engenders. Can we say that either sentiment is unnatural, and that in like circumstances we should not feel it ourselves? I do not think so, and for that reason the whole of British policy has been directed, not to denying or belittling either sentiment, but in the effort to promote reconciliation between them and to meet the supreme need of the world for peace, by turning the minds of both from the past and inviting their co-operation in the future.

In the end, after many attempts at compromise, Germany in October, 1933, again withdrew from the Conference and at the same time announced her intention of withdrawing from the League of Nations. Simon pointed out, in the debate from which I have just quoted, the overwhelming evidence that this stroke had been long prepared and carefully timed, and no one after this debate could accuse the British Government of being responsible in any way for Germany's action. Mr. Henderson and Lord Cecil were at one in declaring that Germany's reasons for her withdrawal were invalid; but, be that as it may, there was no second return. Simon devoted himself in the months that followed to trying to bring about agreement between the French and German points of view. Any success he might have hoped to obtain in these efforts was largely dashed by the German Government's announcement of its intention forthwith to make formidable increases in its own armaments. Simon nevertheless persisted and ultimately laid before the Disarmament Commission, in May, 1934, those modifications in the British plan which seemed to the Government best calculated to lead to an agreement. "We hold," he said on May 30, 1934, "that international agreement about armaments would be the greatest contribution which could be made to the restoration of confidence for the confirmation of peace." He urged that the British Draft



WITH M. LAVAL, 1934

Convention was still the best basis for reaching the agreement, but, he added, "His Majesty's Government will not lend themselves to the indefinite continuance of vague and inconclusive discussions justified by nothing better than the sanguine hope that, after all, something in the way of a solution might still turn up." This produced a strong reaction from M. Barthou, the French Foreign Minister, who insisted that the French conception of security must come before everything else; once more the Disarmament Conference just kept itself afloat by a vague resolution which represented a compromise.

Simon invited Barthou to a conference in London, and there secured a modification of the French Government's plan for an Eastern Pact of Mutual Assistance which made it possible to recommend it to Rome, Berlin and Warsaw; he hoped thereby to give the French sufficient sense of security to make better prospects of a disarmament solution in which Germany's claims for equality would be fairly met. But whatever chance there was of a rapid and favourable development along these lines was shaken by the tragedy at Marseilles in October, when King Alexander of Yugoslavia was assassinated, and M. Barthou, sitting at his side in the motor-car, was so seriously wounded that he bled to death before the artery in his wrist could be bound up.

Apart from the indirect diplomatic results of this outrage, it had also the immediate effect of nearly precipitating war in Central Europe. The assassins had for some time previously been lodged in Hungary, and the Yugoslav Government had excellent reason to feel intense anger at the attitude of Hungary and other neighbours. There was ample fuel for a flare-up; this part of Central Europe has been living on its nerves ever since the collapse of the old Austro-Hungarian Empire. Once again it was Simon's task to keep the peace, an object which was not really helped when M. Laval, the French representative at the conference which was called to discuss the affair, opened his speech with the remark, "In this matter France stands by Yugoslavia!" Once again Simon's diplomacy prevailed: both sides saw that he understood their points of view and was even able to express them more suc-

cinctly than their own spokesman. Once again he managed to conciliate everybody and bring the dispute to a peaceful conclusion.

§

Political agreement is the only road to international peace in Europe, and for the rest of his time at the Foreign Office Simon was engaged in an endless series of negotiations between London and various foreign capitals, all directed to this one end. An opportunity arose in January, 1935, in connection with the territory of the Saar. The Saar Basin, on the western frontier of Germany, had been placed by the Peace Treaty under the jurisdiction of a Governing Commission set up by the League of Nations. The Treaty laid down that after a lapse of fifteen years, a plebiscite of residents in the Saar should be held to determine whether the territory should be returned to Germany, whether it should be ceded to France, or whether it should remain under the suzerainty of the League. The fifteen years were now about to expire and—though this was little realised by the general public—there was every possible danger that the rival claims of France and Germany would lead to an open explosion.

The British Government conceived the bold plan of the formation of an international force consisting of troops from various Powers, but excluding both French and German soldiers, to police the Saar district during the plebiscite. Such a plan was only possible if both France and Germany agreed to it, and if a number of other Powers joined in the novel duty. After Simon had ascertained confidentially that both France and Germany would agree to withdraw any troops from the neighbourhood till the trouble was over, the British plan was put before the League Council, the suggestion was unanimously adopted, and an international force, consisting of 1,500 British, 1,300 Italians, 250 Dutch and 250 Swedes, all under a British commander, entered the Saar and kept order till the plebiscite was over. It was the first time that British troops had crossed to the Continent for duty since the Armistice. Until their arrival the atmosphere had been electric: what their presence meant may be gauged from this eye-witness account in *The Times*:

The British soldiers lost no time in setting their mark on the occasion by their bubbling good humour. All the schoolboys in Saarbrücken seemed to have found their way to the platform, and within a few minutes a bond of sympathy existed between them and the rather older but even noisier boys in khaki. A stout and solemn little Saarlander in a corduroy suit with a violin case under his arm found himself boisterously hailed—"Hey, Jerry, give us a tune!" with explanatory gestures followed by a gale of laughter. One carriage load, determined to be in the right tradition, struck up "Tipperary," bringing a thrill of memory to those who had heard that song sung by other soldiers years ago. . . .

The event of the day, however, was the arrival of the 1st Battalion the East Lancashire Regiment, who marched with band playing through the town. . . .

Their appearance, with their neat new khaki and burnished brasswork, was as smart as it could be. They marched like veterans, and their two first-class bands, playing homely rather than warlike airs, made music which Germans could appreciate. But they marched at ease, with rifles slung and therefore inconspicuous, and bayonets (except for the two which escorted the cased Colours) tactfully sheathed. They whistled gaily as they marched. The waiting people, who had turned out in real force this time, could not but feel that a message of peace and good will as well as an assurance of security had come from Great Britain.

At the sight of these boyish, friendly soldiers wounded pride was forgotten and barriers were broken down. For the first time there was applause for the International Force in the streets of Saarbrücken.

And, thanks to the foreign contingent, the plebiscite went off as quietly as a municipal election in Walthamstow. There was a 90 per cent. poll in favour of reunion with Germany and—what was much more important—all danger of an international conflict was again averted. Once more Simon had saved the situation.

§

In the following month conversations were carried on both in Paris and in London in a further effort to find the basis of European agreement. The main object was to supersede Part V. of the Treaty of Versailles (which had imposed severe limits on the armaments of Germany) by a "general settlement freely negotiated between Germany and the other Powers." As so often before, the kernel of the difficulty was the reconciliation of Equality with Security; the latter, it was hoped, might be provided by regional agreements. The most important and precise of these suggestions was the negotiation of an Air Pact between the five Locarno Powers, with the central idea that the signatories would undertake immediately to bring their air forces into action in the defence of whichever of them might be the victim of unprovoked aerial aggression by any other of the contracting parties. It was not a fresh commitment, but it would have given a more precise definition of the help to be rendered in the event of aggression by air. Simon expounded the plan on the wireless thus:

We naturally ask what advantage it would be for us, and what would be the burden which we should be undertaking. Well, supposing that among the Powers there were France, England, Germany and Belgium, and supposing that we were exposed to this sudden unprovoked aggression from the air, we have at present no treaty which gives us any right to call for the assistance of any Power on the Continent to help us to ward off the blow. Indeed, it has sometimes been a comment on the Locarno Treaty that, though Britain undertook serious responsibilities in certain events on the Continent to assist France or Germany or Belgium, as the case might be, this country under the Locarno Treaty got no such assistance in return. This plan would provide us for the first time with an undertaking for our own immediate advantage.

But you may ask: Would it not also impose upon us very serious additional responsibilities to come to the

help of others? Let me answer this question with complete candour. Assuming that the parties were France, Germany, Belgium and ourselves, the only cases are those in which we are already bound to take part under the Treaty of Locarno. The difference would be this: that whereas at present our promise is a promise under Locarno which is not precisely defined, because under Locarno the promise is to come to the assistance of the other party thus attacked, this would provide that in the case of the other party being attacked by air we would come to that party's assistance immediately with our air force. This undoubtedly gives precision to a promise which at present is expressed in more general terms, but it seems to me, since we in this country have a reputation—and, I hope, deserve it—of keeping our pledged word, that, if the case did arise of unprovoked aerial aggression upon one or other of our neighbours inside the Locarno Treaty, we should find ourselves obliged to take part, and, if we took part, common prudence would suggest that we lost no time about it.

Germany, Italy and Belgium all expressed their general approval of the proposal, but, as so often happened at Geneva, when details came to be worked out, difficulties were multiplied on every hand and ultimately the Air Pact was overlaid in its cradle by reservations.

Following on the Anglo-French conversations, Germany invited the British Government to send Ministers to Berlin to discuss the proposals personally with Herr Hitler. The British Government at once agreed. But immediately afterwards came the announcement by the German Government on March 16, 1935, of its unilateral repudiation of the Treaty of Versailles, of the immediate introduction of conscription in Germany, of the creation of an air force, and of the intention to establish a peace army of thirty-six divisions. This formidable announcement, coming between the acceptance of Germany's invitation and the date of the projected visit, necessarily raised the question whether the visit should be persisted in. The Anglo-French conversations of the previous

month had spoken of "a general settlement freely negotiated between Germany and the other Powers" with a view to removing the restrictions placed on Germany by the Peace Treaty. Here was unilateral action by Germany which made settlement by general agreement more difficult than ever. Simon nevertheless urged that the arranged visit should take place if the German Government would on its part still recognise that the basis of the meeting would be a solution by general agreement. Herr Hitler gave such an assurance. The debate in the House of Commons on March 21, on the eve of Simon's departure with Mr. Eden to Berlin, was a very striking exhibition of unity of spirit. Sir Herbert Samuel declared that "the Foreign Secretary is going to Germany as the representative of the whole nation," while feeling in the Dominions was summed up in the words of General Smuts: "I am deeply grateful to the British Government for remaining calm, in spite of what has happened in Berlin, and for going straight ahead with the task of building the bridge of peace between the nations which they have taken in hand. Although it is late, it is perhaps not yet too late to bring peace and sanity back to Europe and set the wheels of general recovery in motion again. To Great Britain and our Commonwealth is entrusted the difficult but glorious task of being the peacemakers of Europe in the present crisis. It is probably the heaviest task which has ever been laid on her and one which calls for the exercise of all her immense resources, political experience and commonsense statesmanship. Peacemaking is often harder than warmaking. It is certainly much more thankless, but Great Britain to-day is the one Power left in the Old World with sufficient influence and moral prestige to undertake the task, and I am sure it is not beyond her power. May she succeed in the undertaking, which is fraught with such fateful issues for the world!"

. The visit to Germany at the end of March gave the opportunity for a full exchange of views with Herr Hitler; it was something, at any rate, to know at first hand how great the difficulties were in the way of agreement. Simon gave a full account of them to the House of Commons on his return, while Mr. Eden carried out further visits to Moscow, Warsaw



WITH HERR HITLER AND MR. ANTHONY EDEN, 1935

and Prague. The chief result of the Berlin visit, apart from a formulation of "the final requirements of Germany," was a proposal by Herr Hitler that Germany's naval strength should be thirty-five per cent. of British tonnage in ships of war, no less and no more. This led to the negotiation and signature of the Anglo-German Naval Agreement which was signed just before Simon left the Foreign Office—the only agreement for arms limitation which has ever been secured out of all this welter of discussion. Herr Hitler's "final requirements" of land forces led to no agreement with other nations possessing large armies, and have since then, of course, been greatly exceeded, quite apart from his new Austrian (or Great German) additions.

§

Having done their best since the beginning of the year with France and with Germany, the Government also took up discussion with Italy. The conference at Stresa (or rather, on the island in Lake Maggiore which lies opposite that town) was attended by MacDonald and Simon, while France was represented by her Premier, M. Flandin, and her Foreign Secretary, M. Laval, and Italy by Signor Mussolini himself. The conference discussed the German announcement of March 16, and the three States pledged themselves, notwithstanding Germany's unilateral action, to pursue the effort to reach agreement with that country on terms which would take the place of Part V. of the Versailles Treaty. Britain entered into no new commitments, but the official communiqué declared that the necessity of maintaining the integrity and independence of the proposed European Air Pact would continue to inspire their common policy. MacDonald was justified in claiming, in regard to Germany, that, "without condoning her recent action but, on the contrary, making it plain that we regard it as a grave cause for unsettlement, and a blow to international organisation for peace and order, we still keep the door open for Germany."

By common consent Stresa was a successful conference, and it was so conducted as not to inflame Berlin yet further. Simon had indeed ascertained from Berlin that the Germans

had no objection to the formula reached. But conferences, alas, at best explore the region of promise rather than performance, and meanwhile the rearmament of Germany went remorselessly on. Britain would have been justified, in view of the international situation, in entering upon a policy of rearmament sooner than she did, but she had held her hand in a final effort to maintain conditions which might assist the Disarmament Conference. The time had come, however, when further delay would have been suicidal. Germany's preparations and announcements were of ever-increasing gravity; and in the British Government's "Statement Relating to Defence" issued in March, 1935, the inevitable decision was announced in these words:

Peace is the principal aim of British Foreign Policy. The National Government intend to forward this object, not only by methods adopted in past years—support to the League of Nations, security agreements, international understandings and international regulation of armaments—but by any other means that may be available. Notwithstanding their confidence in the ultimate triumph of peaceful methods, in the present troubled state of the world they realise that armaments cannot be dispensed with. They are required to preserve peace, to maintain security and to deter aggression. The deliberate retardation of our armaments as part of our peace policy has brought them below the level required for the fulfilment of these objects, especially in view of the uncertainty of the international situation and the increase of armaments in all parts of the world.

An additional expenditure on the armaments of the three Defence Services can, therefore, no longer be safely postponed.

§

The quarrel with Japan over Manchuria had begun before Simon went to the Foreign Office, and it was destined to provide the British Government for a long time to come with one of its most difficult problems. Japan had certain special

rights in Manchuria in connection with the railways, and, by a process which has now become familiar, she complained of anti-Japanese propaganda with an ever-growing list of grievances. How complicated the problem really was was never perhaps fully realised, except by Foreign Office experts, until the impartial report of the Lytton Commission—the appointment of which Simon had urged on the League of Nations—was published. He came in for much criticism from those who imagined that the League provided a ready and efficient instrument for stopping aggression even by the strongest Power in a most remote corner of the world by the simple process of collective resolutions. In fact (as is more fully realised to-day) there can hardly have been a case in which such a method was less calculated to produce the desired result. While the structure of the League treats all its members as equal and as equally responsible, and gives them all equal voting rights, the burden and the risk in the Far East which might result from positive action would fall first and foremost, and probably alone, upon this country. It was essential for many reasons that Britain should not become involved in a Far Eastern war, yet there were times when the danger was far greater than some supposed. The relation between economic pressure and the risk of war is better understood to-day than it was in 1932; indeed, if economic pressure did not avail later on in the League controversy with Italy, it is manifest that it could not have been an effective instrument against Japan in distant Manchuria. The British Government had the support of the sober opinion of the country in refusing to follow the counsel of the hotheads of pacifism, for the more extreme the pacifist the more recklessly he demanded strong action.

So true a friend of the League as the late Lord Grey answered irresponsible critics in these words: "The attacks on the League for its handling of the Far Eastern trouble are not justified. The League has been a restraining influence from the begininng. Some people say that this Far East question is a test case, and by it the League of Nations will stand or fall. In my opinion it is not a test case; the dispute in the Far East has been between two nations at the other

side of the world. It is quite different from a European question. We have had European questions before in which the League of Nations has definitely achieved success. What more could the League have done? I do not like the idea of resorting to war to prevent war. It is too much like lighting a large fire to put out a smaller one. Anyhow, in this case it seems to me it was peculiarly unsuitable for any action of that sort on the part of the League of Nations. Economic pressure could not have been applied on Japan unless it was done in co-operation with the Government of the United States. I am delighted that the United States has joined with the League as much as it has in this conflict, but I do not for a moment believe that the United States Government has been so bashful that it has been anxious to do much more and has only been waiting to be invited to do so. So far as I am aware, the British Government and the League have shown no backwardness in supporting anything which the United States Government proposed, and to have proposed more than the United States Government was ready to co-operate in would not have been effective and would not have been wise."

Even with our vastly increased fighting strength of to-day, Lord Grey's comments still hold true.

Simon devoted himself to promoting every method of conciliation that was open to Geneva. A Special Committee on the Far East was set up with M. Hyman as Chairman. In spite of the absence of the United States from the League, American co-operation was secured by the presence of Mr. Norman Davis. Japanese assent was obtained, not without difficulty, to the appointment of the Lytton Commission, which included an American member. The records of the Committee show clearly enough that Simon insisted throughout on the principles for which the League stood and that there was no contrast between the British attitude and the attitude of the League as a whole. Indeed, disappointing as developments were to all who had hoped that under the Covenant an effective security against aggression would be found, the Geneva Committee did accomplish some good results which, in the major setback, are easily overlooked.

Japan had landed large forces at Shanghai and bombed the Chinese town with fearful consequences. It became the immediate object of British policy, ably supported on the spot by Admiral Kelly and backed by the representatives of other Powers, to secure the withdrawal of the Japanese and to limit the scene of operations to Manchuria. This was achieved.

There is something strangely perverse in the comment that British policy, as personified by Simon, "encouraged" Japan. The policy of the League throughout the whole affair was not different from that for which Britain stood throughout, and, even though that policy was ineffective to preserve Manchuria for China, it was so unfriendly in the eyes of Japan that she refused to remain a member of the League.

If Japan was "encouraged," why did she leave Geneva?*

§

A reference to Simon in the reminiscences of a retired American statesman, Mr. Henry Stimson, Secretary of State in the Hoover Cabinet, alluding to a telephone conversation he had with the Foreign Secretary, has been greedily seized upon by some of Simon's detractors as suggesting a failure on his part to grasp the opportunity of American co-operation. One would have thought that it was sufficiently naïve to imagine that confidential discussion on important questions of policy between two friendly Governments, each with trusted diplomatic representatives receiving cipher messages every day, is really dependent upon a long-distance telephone call! In fact British policy at the time *was* in the closest co-ordination with that of the United States. America had itself an experienced representative, Mr. Norman Davis, at Geneva, and its ambassador and staff in London, while the British Foreign Office was in constant touch with Washington.

* Some of Simon's critics have tried to bolster up their case against him by quoting a remark made at Geneva by Mr. Matsuoka, the Japanese delegate, who said at one point during the negotiations that Simon had put the Japanese case better in half an hour than he himself had been able to do in weeks. Nobody familiar with Simon's debating powers will fail to recognise a characteristic which, as Mr. Balfour had noted a quarter of a century before, by no means represented agreement with the arguments he so succinctly summarised.

The unfavourable deduction drawn from Mr. Stimson's passage has been once for all exploded in definite but courteous terms by Mr. Neville Chamberlain, who said in debate in the House of Commons on November 5, 1936:

There was one point raised by the hon. Member for East Wolverhampton [Mr. Mander] on which it might be advisable to say a word. The hon. Member spoke of a book recently published by a distinguished American statesman, Mr. Stimson, in which, the hon. Member said, Mr. Stimson stated that in February, 1932, he had suggested to the then Foreign Secretary, now Home Secretary [*i.e.*, Simon], the imposition of sanctions upon Japan, and that he had found the Foreign Secretary and the British Government entirely unwilling to take any part in such a course. The hon. Member said that that was a matter which must be cleared up. I have not read the book in question. I am not, therefore, able to say whether the hon. Member quoted accurately the passage to which he referred. If he did, let me say this—that that passage does not accord with the facts as they are known to His Majesty's Government. In February, 1932, Mr. Stimson did make a communication proposing, not the imposition of sanctions upon Japan, but the invocation of the Nine-Power Treaty. In a letter which he wrote on March 15, 1935, to Lord Lothian, after describing this *démarche* and subsequent discussions, he said that on February 15, 1932, he was informed by Mr. Atherton, the American *chargé* at London, that the British Government would not go with him in the proposed invocation of the Nine-Power Pact, and that "whatever they could do in supporting any such movement on my part could be done only in conjunction with the signatories of the League Covenant and as a part of the League action."

We were then able to show that the written answer which was handed to Mr. Atherton on February 16, 1932, for transmission to Mr. Stimson, stated definitely that the British Government were most anxious to co-

operate with America, and that it was hoped that those of the League Powers who were signatories of the Nine-Power Treaty would also associate themselves with the American *démarche*. Subsequently to that, Mr. Stimson himself abandoned his proposal for the invocation of the Nine-Power Treaty, and I think the hon. Member will therefore see that the account which I have now given, which is an account of the facts as they actually were, does not at all accord with the passage in the book to which he referred.

Simon has never sought to defend himself against the virulent and ill-informed attacks on his policy in the Manchurian crisis: but the record of agreement at Geneva and the action taken by the British Government on this very matter is in itself the best defence. The Stimson doctrine urged at the time was that the territorial gains acquired in disregard of the principles of the League and of the Kellogg Pact ought not to be acknowledged by the League of Nations. It was Simon himself who formulated this proposition at Geneva and secured its adoption, and thereupon Mr. Stimson despatched to the Secretary of the League a message recording the satisfaction of the United States in these terms: "My Government is especially gratified that the nations of the world are united on a policy not to recognise the validity of results attained in violation of the Treaties in question. This is a distinct contribution to international law and offers a constructive basis for peace."

In the face of this it is rather absurd to pretend that there was any failure by the British Government to seize opportunities for co-operation with the United States, and any statement or inference to the contrary stands condemned.

§

While the League, to the distress of all who expected so much from it, did not prove strong enough to curb rivalries and ambitions in these wider fields (any more than it did later in Sir Samuel Hoare's time in certain major problems

nearer home), British foreign policy under Simon was able to register definite successes in more limited directions. The achievement of peaceful settlements in the Saar and after the Marseilles outrage have already been mentioned. There were also all the elements of a really serious conflagration with Persia over the inflammable subject of oil. In an earlier generation there might have been some temptation to deal with it with a high hand. The Palmerston touch! Simon insisted that it was a dispute which ought to be referred to the Council of the League for peaceful settlement; he undertook the conduct of the case round the table at Geneva, and secured a vindication of League methods by bringing about an agreed conclusion.

Another controversy which had a happy ending began with the sudden arrest in Moscow by the OGPU of seven British subjects, engineers who were engaged in installing in Russia complicated turbine plants supplied by the Metropolitan Vickers Company. It was the first (and has so far been the last) time that British subjects were made the victims of judicial methods so often applied with swift and fatal results by the Soviets, and the vigorous action taken by the British Government was unquestionably the cause of the ultimate release of the English engineers, though not before they had been put through a "grilling" and exposed to the grotesque procedure of a Soviet trial. Some of those who at the time protested that Simon's vigour in the matter was out of place have presumably, in the light of subsequent wholesale charges of sabotage, sustained by mysterious "confessions" and followed by mass executions, come to realise that there was ample justification for his anxiety and activity. The Government promptly secured from Parliament powers which would enable it to limit Soviet trade with this country if the Vickers engineers met with a fate which they did not deserve. A vigorous and unexpected speech from the Labour benches by Mr. David Kirkwood, the Clydeside M.P., exposed the absurdity of attributing a breakdown of the plant to the plotting of British technicians who were trying to teach Russian workmen how to use it.

And when all the seven engineers, two of whom had

actually been sentenced, were safely back in their own country, Simon contemptuously dismissed the accusations against them by saying in the House of Commons:

From my point of view, what matters is that some British subjects who were entitled to look for such aid as we could give, and were promised such aid, were given it, and they have been released. I do not think other things matter very much as compared with that. But as the hon. gentlemen opposite have discussed this subject, I will just say this. We were faced, in the matter now happily concluded, with what seemed to us to be a very flagrant wrong. The main accusations were palpably absurd, because in so far as they were an accusation that these men were engaged in what is called the Secret Service, I have said at this box that it was not true; and in so far as they were an accusation that these engineers were engaged in deliberately wrecking their own company's engineering plant, you might as well accuse Mr. Speaker of deliberately breaking the windows of the House of Commons!

The only other matter which remains is this. I have heard a good deal of discussion outside the House as to whether or not the course pursued by the British Government would accelerate these men's release. I have heard it suggested that, if we had only acted with "more deliberation"—with a deliberation which no doubt would have characterised the action of the hon. gentlemen opposite—an earlier release might have been secured. I can contribute one fact for the information of the Committee, and it is that Mr. Litvinov told me himself within the last few days that, according to the regular course of Russian justice, when a man has been convicted and sentenced and then makes a petition for the reconsideration of his sentence, in the ordinary course six months must elapse before the petition is even considered. I am glad to say that at the end of little more than two months these two men got out of prison.

CHAPTER SIXTEEN

SIMON was in a rather unenviable position over the Indian Reform Bill, which Mr. Baldwin and Sir Samuel Hoare put before Parliament in 1934 and the early months of 1935. His own Report showed that he favoured much more gradual and progressive changes than were envisaged in the Bill. It was too late to hope to change Cabinet policy, but he took a very small part in the debate.

His only outstanding contribution was when he defended some supporters of the Government from a charge brought against them by Mr. Winston Churchill of having used excessive and improper pressure on certain Lancashire delegates who had first expressed disapproval of the Bill and then, with suspicious suddenness, declared themselves satisfied with it.

Mr. Churchill made the tactical mistake of overstating his charge. For example, he read a portion of a letter, but, ostensibly for reasons of public interest and Parliamentary procedure, explained that unfortunately he must not read the concluding paragraph. He implied that, if only he could have read this paragraph, his case (which was a pretty strong one) would have been unanswerable. Simon, sitting on the Front Bench with Mr. MacDonald, the Prime Minister, and Mr. Baldwin, asked them to show him the letter. They did so, and, after a glance at the final paragraph, he whispered to them to tell Mr. Churchill that they had no objection to his reading it. Indeed, when it was read, it proved to be quite innocuous, and to this day nobody knows why the speaker drew attention to it or why the Prime Minister and Mr. Baldwin were so reluctant to have it read.

Simon rose to complete Mr. Churchill's discomfiture. The incident, he said, reminded him of something that had happened in a divorce case. "A point arose whether a certain question could be put to a chambermaid witness. The Judge, after hearing much argument, said, 'No.' The Court of Appeal confirmed his ruling. The House of Lords reserved judgment, but at last by a majority decided that the question

could be put to the witness and ordered a new trial. The chambermaid once again appeared in the witness-box; she was asked what she had observed in a corridor of the hotel on the date in question. 'Please, sir,' she replied, 'I don't know. It was my evening out.'

Oddly enough, more than one earnest student wrote to Simon to ask for further details of this very curious legal episode. They might have saved themselves trouble if they had reflected that Simon had made up the story on the spot.

One more incident of this period must be mentioned. In January, 1935, the settlement was announced of an action for libel brought by Simon against the Rev. J. Whitaker Bond, of East Dereham in Norfolk. In the previous year this clergyman had addressed a meeting of the Dereham and District Free Church Council and, in the course of his speech, permitted himself to say, "What is the cause of warfare? The cause of warfare is your legislators, the men in your Cabinet, for their money is invested in armament firms. The reason why Sir John Simon has been running down the Peace Ballot promoted by the League of Nations Union is because his money is invested in armament shares." Mr. Norman Birkett, K.C., who appeared for Simon in court, stated that the latter had in 1927 bought fifteen hundred shares in Imperial Chemical Industries, Ltd.; in February, 1933, an application was made by a firm in that combination to export some cartridges; Simon then becoming aware that munition-making was one, and a minor, function of the combine, at once sold his shares. This was the only shred of foundation for the statement complained of. Mr. Bond, counsel went on, recognised how serious a slander he had uttered and wished to withdraw and apologise; Simon, knowing that the defendant had spoken without deliberate malice, did not desire either damages or costs in the case.

What neither Mr. Bond nor others who had spread this silly rumour (and it has appeared in solemn books about armaments) seemed to realise was that a man like Simon, who had a reputation for scrupulous dealing in politics and at the Bar, was also unlikely—even if one took a fanatically uncharitable view of his character—to risk the depreciation

of all the rest of his capital for the sake of a holding which represented so infinitesimal a portion of it. A rudimentary sense of proportion—not to speak of a sense of humour—would have saved Mr. Bond from a humiliating experience.

§

In June, 1935, Mr. MacDonald resigned the Premiership and Mr. Baldwin took his place. The convention on these occasions is that every Minister puts his resignation in the hands of his new chief in order to facilitate the reconstruction of the Ministry. There was a general post in the Cabinet, some ten or eleven changes in all. Sir Samuel Hoare was rewarded by Mr. Baldwin for his labours over the India Act by being appointed to the Foreign Office—for a very short time, as it turned out—while Simon was promoted to the senior of the four Secretaryships of State, at the Home Office, becoming at the same time Deputy-Leader of the House of Commons.

The *Manchester Guardian* commented gloomily on the change. "Let there be no mistake about it; Sir John Simon has been driven out of the Foreign Office by an unrelenting Tory campaign against him in which some distinguished hands have had a part." But this was an error. Simon's ambition, his characteristic desire for variety, and Mr. Baldwin's desire to reward an old friend were the true explanations.

At the same time Simon may well have been pleased not to have been Foreign Secretary when the long Italo-Abyssinian wrangle began. Having written a preface a few years previously to Lady Simon's unanswerable exposure of the Abyssinians' foul methods of slavery, he would have found it difficult to express much sympathy with them—even though they were members of the League of Nations.

Mr. Baldwin's habit of sitting hour after hour on the Treasury Bench, even though his colleagues were responsible for the debate, might not seem to leave much scope for a Deputy-Leader, but from time to time an opportunity arose and Simon used it adequately; his new position in the House marked his status in the administration. A Foreign Secretary nowadays is so constantly occupied with the cares of his

department, involving not only journeys to Geneva and elsewhere but continual interviews also with diplomatic visitors, that he can take little part in the general work of the House. An active-minded Home Secretary, however, can help in leading the House, and Simon always attached at least equal importance to this side of his new duties as to his departmental work, with the nature of which he was indeed familiar, for he had been Home Secretary twenty years before. The Foreign Secretary carries a continuous burden of care and has to face a certain number of constantly recurring international issues of great gravity which rarely, if ever, come to a final conclusion. The Home Secretary, on the other hand, has to decide a vast number of comparatively limited matters which crowd upon him, but which can usually be disposed of once and for all. "The principal duty of a Home Secretary," Mr. Asquith once said—and he had been a good one—"is to prevent a second-class row from becoming a first-class row." Simon has always shown a capacity for pouring oil on troubled waters.

There have been Home Secretaries who were singularly unfortunate in the discharge of their duty as the chief Ministerial "half-back"—one, for example, whose list of troubles, now largely forgotten, included the Maybrick case, the case of Miss Cass, and the Trafalgar Square Riots. The Home Secretary in his administrative work should be, as far as possible, neither seen nor heard. Simon certainly had an unusually complete equipment for his task at the Home Office. He understood the legal conundrums of the work without being coached, and he could supply the quickness, the patience and the sympathy needed for the dreadful duty of deciding on remissions of punishment. He enjoyed answering questions on home affairs. An Opposition is always eager to pounce on any failure or weakness, and he now had time to take constant part in general debate in defence of Government policy.

One of the major troubles with which the Home Office had to deal at this period was the increasing bitterness engendered by clashes between the Blackshirts, whom Sir Oswald Mosley had organised in imitation of the Italian model, and resentful mobs and processions of extremists stirred up by the equally

violent outlook of the Communists. Though the numbers genuinely committed to extreme views on either side may have been small, each body was capable of immense mischief, and, when they were mixed together in the East End of London with a spice of anti-Jewish feeling added to the combination, there were all the elements for a really dangerous explosion. The London policeman is a cool-headed and well-disciplined guardian of the law, but he found himself harried from two sides, and wild scenes at Mosley's meetings and in the Jewish quarters of the East End brought a peck of trouble to the Home Secretary and to the Commissioner of Police whose spokesman he is. As always happens in such cases, the Government was accused by each side of favouring the other, whereas it was clear to all ordinary people that the police were merely trying to discharge their duty in very difficult circumstances. The trouble developed for some months and became a menacing crisis in certain areas. But it ended with dramatic suddenness. Simon introduced his Public Order Bill which limited the power of conducting public processions through crowded streets in conditions likely to produce disorder, and which re-defined the law relating to public meetings. If the test of a good piece of legislation is that it deals promptly with the evil which made it necessary, the Public Order Bill is certainly a case in point; and Simon was justified in claiming that what Parliament thus enacted was really not a limitation but an extension and a guarantee of our liberties. "The right of free speech," he told his constituents, "does not mean that one side is entitled to threaten and abuse its opponents as much as it likes while the other side is not entitled to enjoy any rights at all."

Reaction to the Bill was favourable from all sides of the House. During the Second Reading, Mr. Herbert Morrison said: "In this matter the Home Secretary has acted promptly after certain incidents have occurred, not as a politician, not as a partisan Minister, but as a Minister of the Crown, responding not to the clamour of any political party, but responding to the demand of everything that is decent, everything that is good, everything that is fine in British public opinion, and, having so acted, he is entitled to the support of the House."

The biggest piece of legislation launched in Simon's time at the Home Office was the Factory Bill of 1937. There had been no comprehensive measure of Factory Law Reform for more than thirty years, though there had been many bits of piecemeal amendment in the interval. Various Governments had tried their hand in vain at framing and carrying through the much needed comprehensive measure. When Sir William Joynson-Hicks was Home Secretary in a Conservative Government, the project had been entered upon but not proceeded with. Arthur Henderson and Mr. J. R. Clynes, who were in turn Home Secretaries in Labour Governments, had promised or proposed a Bill, but nothing had come of it. Simon's opportunity was more favourable, for (as in the case of the India Bill) it is the combination of parties behind the National Government which makes the most elaborate legislation feasible and which softens opposition. Another advantage which the Government's Bill had when it was introduced was that it was the result of many months of careful preparation behind the scenes and represented the fruits of prolonged negotiations with both employers and workpeople. After two days' debate on Second Reading, the great Bill was sent "upstairs," where the Home Secretary himself took charge, and, by getting the Committee to sit two and even three days a week for several months he saw his ship make her way steadily to port in an atmosphere of widespread good-will. It was "through Committee" a couple of days before its main author became Chancellor of the Exchequer, and his successor, Sir Samuel Hoare, skilfully and successfully steered it through its remaining stages to the Statute Book.

Another Bill which Simon carried into law during his time at the Home Office was the Ministers of the Crown Act, which revised the salaries of Cabinet Ministers, giving £10,000 a year to the Premier and bringing up all other Cabinet salaries to £5,000. It also provided a salary of £2,000 for the leader of the Opposition, and a pension of £2,000 a year for ex-Premiers. He was also responsible for the Fines Act, which gave much needed relief to certain less fortunate members of the community.

§

Five months after Simon's return to the Home Office another General Election came in November, 1935, and he had to fight the twelfth—and closest—Parliamentary contest of his career. Throughout the country the political pendulum was reversing its exaggerated swing to the Right at the 1931 election and returning to the more normal situation of 1929. Simon had then won the Spen Valley by only 2,739 votes in a poll of some forty-five thousand, and his prospects of victory now were dubious. His Labour opponent this time was Mr. Ivor Thomas, a young Welsh Oxford graduate, who five years before had written a lively biography of Lord Birkenhead; and there was no Communist. With a view to detaching old-fashioned Liberal voters from Simon, Mr. Thomas attacked him vigorously about his change of views on the fiscal issue. He replied frankly at a Cleckheaton meeting: "I am not ashamed of having been a fervent upholder of Free Trade, which has greatly assisted prosperity in times past. . . . When I began to examine modern conditions under which British industry competed with the rest of the world, I did not fail to face openly and honestly my thoughts and anxieties. I am one of the Liberals who, even before the end of the Socialist Government, had quite openly confessed that I did not see how Free Trade was going to preserve the great enterprises which are so important to this country." And, five days later, at Derby, he added, "I think nothing of the politician whose one object in life is that, when he comes to the end, there shall be written on his tombstone, 'He was consistent because, at the end of his life, he had never learned anything.'"

Clear avowals like these, however, are not always popular in the heat of Parliamentary elections as conducted in this country, and his opponents persisted in denouncing him as a turncoat. His posters merely insisted that:

WE MUST CONTINUE PARTY CO-OPERATION

AND

VOTE FOR SIMON!

The Spen Valley is certainly a curious constituency, for with an electorate of no fewer than fifty-five thousand the total votes now cast were within 120 of those polled in 1929—42,700 against 42,581. Simon lost 368 votes; his opponent gained these as well as the 1929 Communist's 242—and, otherwise, only 119 from the untapped resources of the district. Which meant that he received 21,029 votes against Simon's 21,671, the latter scraping in by a mere six hundred. There were many close finishes at this General Election, but surely few other constituencies could show so strange a similarity with their voting at the last normal election.

Simon, more and more immersed in administrative work, had for some time relied largely on his wife to keep him in touch with matters in his constituency. A long illness soon after this election made it impossible for her to continue this work with her usual energy, and it came as no surprise when, two years later, he announced that he would in future stand for a constituency nearer London.

§

This is not the place to discuss the tragi-comic events of the autumn of 1936, which ended with the abdication of Edward VIII., the most beloved King in English history. Probably, if the opinion of his subjects could have been taken, there would have been an overwhelming majority among people *under* fifty years of age that he should be permitted to marry the lady he loved and to retain the Throne, and an equal majority to the contrary among those *over* that age. However, the older generation prevailed and the King retired abroad, his admirable composure unshaken even by uncharitable comments with which the Archbishop of Canterbury pursued him.

Simon, as Home Secretary—and, therefore, officially the King's secretary—was one of the four Ministers who composed the inner ring of the Cabinet during the crisis. The others were Mr. Baldwin, who not for the first time found his common reputation as a slow-witted, high-minded old country gentleman a valuable asset; Mr. Malcolm MacDonald, the Secretary for the Dominions, who had the awkward task

of keeping the Dominion Prime Ministers informed of the progress of the affair, and of preventing any awkward independence of opinion on their part; and Mr. Neville Chamberlain, the Chancellor of the Exchequer, whose considerable share in the proceedings was concealed from the public and the Press by the fact that No. 11, Downing Street, his official residence, had indoor communication with the Prime Minister's house at No. 10. Simon's main task was to place his expert knowledge as a constitutional lawyer and his long experience of affairs of State at his colleagues' disposal. There followed, early in the new reign, the Regency Bill, of which he had charge and which was specially important because the next heir to the throne is a child.

It was his last major task at the Home Office, where it may be said that he had spent a happy and successful time, with a high record of achievement and no serious troubles—in the Asquithian sense. His position in the House certainly improved during this period, which had much to do with his next Ministerial appointment.

All good things come to an end, and, after the Coronation, Mr. Baldwin retired at last from the political arena. He was rewarded by an Earldom and the freedom of the City of London, Bewdley, Aix-les-Bains and other centres. Mr. Chamberlain became Prime Minister and chose Simon to be his Chancellor of the Exchequer, a post which traditionally carries with it the reversion of the Premiership. Simon's first task was a little disconcerting: he had to take over the conduct of the Budget which Mr. Chamberlain had just introduced, including the already unpopular and moribund "National Defence Contribution." However, this was soon re-framed and Simon was able to settle down to his congenial duties. Alone of his colleagues he could boast of having been a Minister of four Kings—Edward VII., George V., Edward VIII., and now George VI.

It is far too early yet to attempt to pass judgment on this new phase of his career. He has, however, had far more to do with matters of high finance and taxation than might be supposed; for, in addition to his early drilling and his practice at the Bar, he had worked hard on them and was accustomed

to learn from others. He proved in 1931 that he had a mastery of financial and similar problems, while he quickly showed, as Chancellor, that the technical side of his office was well within his grasp, one of his first tasks being to propose, explain and carry through an increase in the funds of the Exchange Equalisation Account, a most complicated and expert business. On April 26, 1938, he presented his first Budget to Parliament under the ever-darkening shadow of re-armament, though a silver lining appeared in the agreements with Italy and Eire which he had just helped to conclude. Despite a sixpenny increase in income tax, it was an intentionally dull Budget. Indeed, "I've discovered that making a Budget is nothing," he had remarked cheerfully and characteristically to a friend three days before, "but what has been really difficult is dodging the publicity merchants!"

§

Simon's personality seems at times to have puzzled people. He certainly lacks picturesque faults: he has not the unabashed egotism of Mr. Lloyd George, or the complacent simplicity of Lord Baldwin, or the sometimes reckless dash of Mr. Winston Churchill. He even lacks that pomposity which the older generation so obviously expects from statesmen. When Sir Edward Carson said in 1908 that he really did not know what Simon's vices were, he was jocularly expressing a view which has pained cartoonists, music-hall comedians, and bar-parlour politicians ever since. As a result, we find that his critics are unable to put up much of a case against him. When the Socialist Miss Ellen Wilkinson ("Nippy" to the House of Commons) complains that he "reminds me of an arum lily"; when the Liberal Lady Oxford declares that "he has a lonely uneasy self; he has never given it any rope; he is as grudging to himself as he is generous to his friends"; when the Conservative Mr. Churchill suggests that "where he makes mistakes is not in the manner in which he conducts a [political] brief, but in his over-readiness to accept any brief tendered to him in the proper manner," it may be assumed that they have tried from their various points of view to say the worst they feel about him.

Yet their complaints do not seem very substantial or true. Miss Wilkinson's is rather pointless, for arum lilies presumably toil not, neither do they spin, whereas Simon has done both to some purpose. Lady Oxford comes perhaps a little nearer the mark when she speaks of his personal loneliness; this was true enough from 1901 to 1917, but since then it has ceased to be true. (She is certainly right to speak of his generosity to others: I have a letter before me now from one of his colleagues at the Bar, who says simply, "At one time when I was hard up his spontaneous generosity was one of the nicest forms of assistance that one could wish for. The method and manner of the giving were perfect.")

While, as for Mr. Churchill's rebuke to him for alleged over-readiness to accept political briefs, this seems to be a new reading of the old error that Simon is a lawyer before everything else and, secondly, a suggestion of political amorality which is contradicted, to mention only one example, by his War-time resignation over conscription. I will not pretend that Simon has never subordinated private doubts to Cabinet discipline; every Minister has of necessity sometimes to defend a thesis about which he is privately lukewarm—perhaps Mr. Churchill was still a little sore about the laugh Simon raised against him in the Indian debate with the Divorce Court story—but it would be folly to suggest that Simon has ever, for personal advancement, urged a policy of which he fundamentally disapproved. Since the same charge is often, and equally unjustly, brought against Mr. Churchill, the latter's generous nature will, I think, make him the first to admit that his remark about Simon was neither wholly adequate nor wholly accurate.

His lack of spectacular characteristics is due to his nature and upbringing. Nobody born and bred in a Nonconformist minister's house is ever likely to deck himself out in gay colours, emotionally or physically; Bonar Law was another example of this ingrained reticence. Such men will not go out of their way to make themselves agreeable to the mob. If Simon gives the impression sometimes of working against the grain when he is compelled by the exigencies of present-day politics to make "popular" appeals, the fault is less with him

than with those who, as political organisers or political audiences, demand such appearances. Nobody can pretend that he has ever sought to use such tactics to curry personal popularity.

He has an outstanding intellect, a fact which the country, after some years of government by mediocrities, will perhaps no longer regard as a liability. "Muddling through" is all very well when it comes off, but the problems of to-day, both internal and international, are altogether too tricky to be left safely to half-trained amateurs. Mr. Chamberlain's Premiership is a welcome return to sanity in this respect, and one may hope that the example will be a salutary precedent. Simon's success and versatility at the Bar, as in politics, are sufficient proof of his brain-power, and there is a queer feature about this which some have noticed. He seems capable of doing two things at once without difficulty. Thus, one of his juniors has told me that "I have seen him writing one thing and discussing another quite different thing at the same moment," and I remember that the well-known solicitor, Mr. William Charles Crocker, against whose client Simon was once appearing in the High Court, was surprised to see him bend down in the midst of arguing a knotty point of law with the Judge, scribble some words on a piece of paper and pass them over; Mr. Crocker read, "This isn't as amusing as skating at Pontresina!" and recalled that a few weeks previously he and Simon had met on the rink at that Swiss resort. Double-mindedness (in *this* sense) is certainly an asset, especially when it is backed, as in Simon, by a superb physique.

The notion that he is a lawyer first, and a public man only second, is, as I have shown throughout this book, a foolish one. From the days when a guinea brief was a glorious occasion to the years when five-figure briefs rolled into his chambers, he has always regarded the law as a secondary occupation. People who echo the parrot-cry of "lawyer politician" about every politician who is also a lawyer may be warned against jumping to conclusions by one of Simon's many *ad hoc* stories. "A friend of mine just returned from hunting in Central Africa," he once related, "told me of a most remarkable occurrence. His party was trekking through a heavily wooded region, when the cries of

a number of birds attracted him to a piece of overgrown jungle. Peering within, he beheld a trunkless body. At this point I interrupted. 'You mean a headless body,' I said to my friend. 'My dear fellow,' he replied, 'don't jump to conclusions. The body was that of an elephant.'" Simon's dominant interest in politics is at least as obvious as any elephant's body. Moreover, he has often shown himself very much more critical of the law than the majority of his legal colleagues. In an introduction which he wrote to an account of the De Keyser's Hotel case he spoke with evident disrespect of the rule that courts in this country are bound by decisions in previous cases, even though those decisions do not always command agreement. And, four years after the Malcolm case, he told the Canadian Bar Association what he thought of the right of a prisoner to give evidence in serious cases:

Time was when a man accused of a felony under the old common law of England stood there without counsel—unless, indeed, somebody could find a flaw in the indictment and counsel was assigned to argue the point. And the result was that juries and Judges often refused to convict because they felt that he was not having fair play. Then a benevolent Legislature intervened; the accused person was deprived of that advantage and given the right to employ counsel. After hearing counsel for the defendant, juries were less squeamish about convicting. But the poor prisoner could not pay for counsel, and thereupon the Legislature came forward and deprived him also of that excuse by arranging that in proper cases he should be provided with counsel for nothing. There remained now only one further refuge for the unfortunate man, who wanted nothing better than that he should sit still in the dock and say nothing and do nothing until the thing was over. It was always possible for his advocate, when everything else failed, to say, "Ah, gentlemen of the jury, you have heard evidence against my client, but his lips are closed; he has no right to take the witness-stand and testify out of his

own mouth as to what happened." Thereupon Parliament intervened and said, "Oh, yes, he may testify if he likes," and the last protection and refuge which the common law had cast round the person who was short of an adequate explanation has been removed—has been removed by the Legislature in the supposed interests of the accused. It is good for the innocent, but it is troublesome for those with no explanation to give.

And he once told the House of Commons, as an illustration of the law's delays, about a case—a real one this time, unlike the Divorce Court yarn with which he confounded Mr. Churchill—in which the learned Judge was taking notes of the evidence in very slow, laborious longhand. The prisoner had just given an answer which the Judge was slowly inserting on the pad before him. "What was your last sentence?" the latter asked. "Five years' penal servitude, my Lord," the prisoner replied, with the result that the trial had to be stopped, the jury dismissed, and the case begun all over again.

It is perhaps another sign of Simon's diffidence towards making an appeal to a popular audience that his fund of anecdotes is less evident on the platform than in his private circle. However, he is certainly growing less restrained in this respect, and, given an intelligent audience, his speeches no longer reflect the almost unwavering solemnity of his pre-War days. He is, moreover, the only public man I have ever met who tells stories *against* himself with more gusto than stories *about* himself.

He has always been physically strong. The good digestion, which, as he has told us, is supposed—with a good clerk—to ensure success at the Bar, has not failed him, and he has managed to find time to keep himself fit even at his busiest. Golf has for years been his chief pastime, and undoubtedly his move in 1933 from the Elizabethan glories of Fritwell to a modern house on the verge of Walton Heath was largely conditioned by a desire for better golfing facilities within comfortable range of London. I have already described his style of golf, whereby he has pertinaciously reduced his handicap from rabbit proportions to a decent 11, but he is prudent

enough not to dare to relax his concentration. Thus, when a small boy once asked him outside a clubhouse for his autograph, he sadly wrote in it, "John Simon: two down and one to play. Moral: mind your short putts!" He has obtained the highest social honour connected with the game, having in 1936 been elected Captain of the Royal and Ancient Club at St. Andrews: late in that year he appeared in all the glory of his red coat at a dinner of the Oxford and Cambridge Golfing Society, assuring his fellow-diners that he was eager to exhibit the coat before the Public Order Bill made it illegal! He has also announced his intention of writing a book, "*How to Play Golf*, by One who Can't," and to invent a golf ball which will squeal for assistance when it is lost in the rough. In the last ten years he has taken to skating, and, as at golf, has shown a deplorable desire to achieve proficiency by taking pains. At Pontresina some little time ago he decided that, come what might, he would pass the third-class skating test before his short holiday was over. He therefore arrived daily on the rink at nine o'clock, and remained on it, industriously practising, for many hours. One of the English judges was so appalled at the possibility of having to disappoint Simon by ploughing him that he left Switzerland a day before the test, which, however, the candidate passed with flying feet.

Of indoor games chess has always been his favourite. He rarely travels without a pocket-chessboard, though it may be that he also values this because it allows him to refuse the conversational advances of indiscreet fellow-passengers. Opening an international chess conference in Cambridge in 1932 he remarked sardonically, for Geneva was being very tiresome at the time:

A Foreign Secretary has many opportunities of becoming acquainted with international conferences. A conference, however, which is going to be conducted on the principle that nobody speaks, and which is quite certain to have achieved some definite result, which nobody will seek to deny or contradict, is a curiosity among international conferences. I shall take away from Cam-

bridge a very pleasant model of what a conference ought to be!

He reminded the players that chess is the only game allowed to be played in the House of Commons; perhaps, he mused, it is "a game particularly suited for politicians, as being almost the only one at which it is impossible to cheat." And in a speech to the Chess Circle at the Authors' Club in London, he told the sad story of a man who, like himself, was both a chess-player and a lawyer:

Think of that marvellous boy, the Chatterton of chess, Paul Murphy of New Orleans, who from the age of ten showed amazing aptitude in the game and won a first prize in a major tournament in New York at the age of twenty-one. He came to Europe seventy years ago, defeated the strongest players in London and Paris, returned to his own country, abandoned chess for the profession of advocacy in the Law Courts, and was never heard of in his new occupation, and, after only partially recovering from an attack of insanity, died miserably at the age of forty-seven.

He added cheerfully, "What a warning to us all to stick to the job we do best!" Incidentally, he remarked on the same occasion that, though chess is a game in which the element of judgment is supreme from the first moment to the last, there was always a chance that a move might turn out better than the average player expected, and "There is no rule of chess that a winner must confess that he builded better than he knew."

§

And so, for the moment, I take leave of the subject of this book. It is never easy to portray anybody so out of the common run as Simon, but, if I have succeeded in showing that, far from being an aloof "arum lily" or a grudging pedantic "lawyer-politician," he is a man of courage, determination, and warmly generous instincts, I have achieved some part of my purpose. Should this result be disconcerting for those who know of him only by gossip, caricatures, and partisan prejudice, the fault is scarcely mine.

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